

AMENDED IN ASSEMBLY JANUARY 12, 1998

AMENDED IN ASSEMBLY JANUARY 5, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1290

Introduced by Assembly Member Havice
(Principal coauthor: Senator Peace)

February 28, 1997

~~An act to amend Sections 667.71 and 1170.1 of the Penal Code, and to amend Sections 676, 707, and 828.1 of the Welfare and Institutions Code, relating to kidnapping. An act to amend Sections 208, 290, 422.75, 667.5, 667.61, 667.7, 667.71, 1170.1, 1174.4, 1269b, 2933.5, 2962, 3003, and 3057 of the Penal Code, and to amend Sections 676, 707, 828.1, and 3052 of the Welfare and Institutions Code, relating to crime and punishment.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1290, as amended, Havice. Kidnapping.

Existing law, as interpreted by the California Court of Appeal, provides that subdivision (b) of Section 208 of the Penal Code, imposing increased punishment for kidnapping a child under the age of 14 years, is a distinct crime rather than a penalty enhancement.

This bill would declare the Legislature's intent that the above provision establishes a penalty enhancement for the crime of simple kidnapping, not a separate offense and would make conforming changes. Because this bill would expand the

definition of an existing crime, it would create a state-mandated local program.

Existing law provides that the crime of kidnapping is punishable by imprisonment in the state prison for 3, 5, or 8 years.

This bill would provide that if the person kidnapped is intentionally confined in a manner that exposes that person to a substantial likelihood of death, the crime is punishable by imprisonment in the state prison for life with the possibility of parole. By changing the definition of a crime and increasing the punishment for the newly defined crime, the bill would impose a state-mandated local program.

Existing law provides, with regard to the kidnapping of a person, that if the victim is under 14 years of age at the time of commission of the crime, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years.

This bill would declare the Legislature's intent that the above provision establishes a penalty enhancement for the crime of simple kidnapping, and not a separate offense, and would make conforming changes.

Existing law requires imposition of an enhanced term of imprisonment on any person who is convicted of a specified felony and who, in the commission of that felony, personally used a firearm, intentionally and personally discharged a firearm, or intentionally and personally discharged a firearm and proximately caused great bodily injury as defined.

This bill, by cross-reference, would make applicable, where this enhancement has been imposed, provisions of existing law that do the following: require admission of the public to a juvenile court hearing; require consideration of certain information in the juvenile court's determination of whether a minor is a fit and proper subject to be dealt with under the juvenile court law; impose a sentence enhancement for use of a firearm in the commission of a felony because of a victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation; prescribe sentence enhancement or increased punishment of a person who is convicted of any of specified offenses; provide for the ineligibility of a woman convicted of a crime, who has previously committed any of certain offenses, for an

alternative sentencing program; require the consideration of certain aggravating or enhancing factors in the preparation and annual revision by superior, municipal, and justice court judges of a uniform bail schedule for bailable felony offenses; provide for the ineligibility of a state prison inmate for behavioral credits on his or her term of imprisonment; require treatment by the State Department of Mental Health of a prisoner who meets certain criteria and has committed one of specified offenses; limit the circumstances under which an inmate may be released on parole when that inmate has been convicted of a violent felony, as defined or of a felony in which the defendant inflicted great bodily injury; forbid the restoration of forfeited worktime credits to prison inmates or parolees; and provide for the ineligibility of a defendant to be committed for treatment for narcotics addiction or because the person is in imminent danger of becoming an addict.

Existing law provides that a person who is convicted of a specified offense, who also meets two or more specified circumstances, is punishable by life imprisonment with a minimum parole eligibility date of 25 years. If the person is convicted of one of the same specified offense and only meets one of the specified circumstances, that person is punishable by life imprisonment with a minimum parole eligibility date of 15 years.

This bill would specify an additional circumstance justifying increased punishment under the above provisions. That circumstance would require that the prosecution plead and prove that the defendant intentionally confined the victim in a manner that exposed the victim to a substantial likelihood of death.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. *Section 208 of the Penal Code is amended to read:*

208. (a) Kidnapping is punishable by imprisonment in the state prison for three, five, or eight years.

(b) If the person kidnapped is under 14 years of age at the time of the commission of the crime, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years. This subdivision is not applicable to the taking, detaining, or concealing, of a minor child by a biological parent, a natural father, as specified in Section 7611 of the Family Code, an adoptive parent, or a person who has been granted access to the minor child by a court order.

(c) *If the person kidnapped is intentionally confined in a manner that exposes him or her to a substantial likelihood of death, the kidnapping is punishable by imprisonment in the state prison for life with the possibility of parole.*

(d) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

SEC. 2. *Section 290 of the Penal Code is amended to read:*

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if

1 he or she is residing, or if he or she has no residence, is
2 located upon the campus or in any of its facilities, within
3 five working days of coming into any city, county, or city
4 and county in which he or she temporarily resides, or, if
5 he or she has no residence, is located.

6 (B) If the person who is registering has no residence
7 address, he or she shall update his or her registration no
8 less than once every 90 days in addition to the
9 requirement in subparagraph (A), on a form as may be
10 required by the Department of Justice, with the entity or
11 entities described in subparagraph (A) in whose
12 jurisdiction he or she is located at the time he or she is
13 updating the registration.

14 (C) Beginning on his or her first birthday following
15 registration or change of address, the person shall be
16 required to register annually, within five working days of
17 his or her birthday, to update his or her registration with
18 the entities described in subparagraph (A), including,
19 verifying his or her name and address, or temporary
20 location, on a form as may be required by the
21 Department of Justice.

22 (D) In addition, every person who is a sexually violent
23 predator, as defined in Section 6600 of the Welfare and
24 Institutions Code, shall, after his or her release from
25 custody, verify his or her address every 90 days in a
26 manner established by the Department of Justice.

27 (E) No entity shall require a person to pay a fee to
28 register or update his or her registration pursuant to this
29 section.

30 (2) The following persons shall be required to register
31 pursuant to paragraph (1):

32 (A) Any person who, since July 1, 1944, has been or is
33 hereafter convicted in any court in this state or in any
34 federal or military court of a violation of Section 207 or 209
35 committed with intent to violate Section 261, 286, 288,
36 288a, or 289, Section 220, except assault to commit
37 mayhem, Section 243.4, paragraph (1), (2), (3), (4), or
38 (6) of subdivision (a) of Section 261, or paragraph (1) of
39 subdivision (a) of Section 262 involving the use of force
40 or violence for which the person is sentenced to the state

1 prison, Section 264.1, 266, 266c, subdivision (b) of Section
2 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285,
3 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of
4 Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6,
5 former Section 647a, subdivision (c) of Section 653f,
6 subdivision 1 or 2 of Section 314, any offense involving
7 lewd or lascivious conduct under Section 272, or any
8 felony violation of Section 288.2; or any person who since
9 that date has been or is hereafter convicted of the attempt
10 to commit any of the above-mentioned offenses.

11 (B) Any person who, since July 1, 1944, has been or
12 hereafter is released, discharged, or paroled from a penal
13 institution where he or she was confined because of the
14 commission or attempted commission of one of the
15 offenses described in subparagraph (A).

16 (C) Any person who, since July 1, 1944, has been or
17 hereafter is determined to be a mentally disordered sex
18 offender under Article 1 (commencing with Section
19 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare
20 and Institutions Code or any person who has been found
21 guilty in the guilt phase of a trial for an offense for which
22 registration is required by this section but who has been
23 found not guilty by reason of insanity in the sanity phase
24 of the trial.

25 (D) Any person who, since July 1, 1944, has been, or is
26 hereafter convicted in any other court, including any
27 state, federal, or military court, of any offense which, if
28 committed or attempted in this state, would have been
29 punishable as one or more of the offenses described in
30 subparagraph (A) or any person ordered by any other
31 court, including any state, federal, or military court, to
32 register as a sex offender for any offense, if the court
33 found at the time of conviction that the person
34 committed the offense as a result of sexual compulsion or
35 for purposes of sexual gratification.

36 (E) Any person ordered by any court to register
37 pursuant to this section for any offense not included
38 specifically in this section if the court finds at the time of
39 conviction that the person committed the offense as a
40 result of sexual compulsion or for purposes of sexual

1 gratification. The court shall state on the record the
2 reasons for its findings and the reasons for requiring
3 registration.

4 (F) (i) Notwithstanding any other subdivision, a
5 person who was convicted before January 1, 1976, under
6 subdivision (a) of Section 286, or Section 288a, shall not be
7 required to register pursuant to this section for that
8 conviction if the conviction was for conduct between
9 consenting adults that was decriminalized by Chapter 71
10 of the Statutes of 1975 or Chapter 1139 of the Statutes of
11 1976. The Department of Justice shall remove that person
12 from the Sex Offender Registry, and the person is
13 discharged from his or her duty to register pursuant to the
14 following procedure:

15 (I) The person submits to the Department of Justice
16 official documentary evidence, including court records or
17 police reports, which demonstrate that the person's
18 conviction pursuant to either of those sections was for
19 conduct between consenting adults that was
20 decriminalized; or

21 (II) The person submits to the department a
22 declaration stating that the person's conviction pursuant
23 to either of those sections was for consensual conduct
24 between adults that has been decriminalized. The
25 declaration shall be confidential and not a public record,
26 and shall include the person's name, address, telephone
27 number, date of birth, and a summary of the
28 circumstances leading to the conviction, including the
29 date of the conviction and county of the occurrence.

30 (III) The department shall determine whether the
31 person's conviction was for conduct between consensual
32 adults that has been decriminalized. If the conviction was
33 for consensual conduct between adults that has been
34 decriminalized, and the person has no other offenses for
35 which he or she is required to register pursuant to this
36 section, the department shall, within 60 days of receipt of
37 those documents, notify the person that he or she is
38 relieved of the duty to register, and shall notify the local
39 law enforcement agency with which the person is
40 registered that he or she has been relieved of the duty to

1 register. The local law enforcement agency shall remove
2 the person's registration from its files within 30 days of
3 receipt of notification. If the documentary or other
4 evidence submitted is insufficient to establish the
5 person's claim, the department shall, within 60 days of
6 receipt of those documents, notify the person that his or
7 her claim cannot be established, and that the person shall
8 continue to register pursuant to this section. The
9 department shall provide, upon the person's request, any
10 information relied upon by the department in making its
11 determination that the person shall continue to register
12 pursuant to this section. Any person whose claim has been
13 denied by the department pursuant to this clause may
14 petition the court to appeal the department's denial of
15 the person's claim.

16 (ii) On or before July 1, 1998, the department shall
17 make a report to the Legislature concerning the status of
18 persons who may come under the provisions of this
19 subparagraph, including the number of persons who
20 were convicted before January 1, 1976, under subdivision
21 (a) of Section 286 or Section 288a and are required to
22 register under this section, the average age of these
23 persons, the number of these persons who have any
24 subsequent convictions for a registerable sex offense, and
25 the number of these persons who have sought successfully
26 or unsuccessfully to be relieved of their duty to register
27 under this section.

28 (b) (1) Any person who is released, discharged, or
29 paroled from a jail, state or federal prison, school, road
30 camp, or other institution where he or she was confined
31 because of the commission or attempted commission of
32 one of the offenses specified in subdivision (a) or is
33 released from a state hospital to which he or she was
34 committed as a mentally disordered sex offender under
35 Article 1 (commencing with Section 6300) of Chapter 2
36 of Part 2 of Division 6 of the Welfare and Institutions
37 Code, shall, prior to discharge, parole, or release, be
38 informed of his or her duty to register under this section
39 by the official in charge of the place of confinement or
40 hospital, and the official shall require the person to read

1 and sign any form that may be required by the
2 Department of Justice, stating that the duty of the person
3 to register under this section has been explained to the
4 person. The official in charge of the place of confinement
5 or hospital shall obtain the address where the person
6 expects to reside upon his or her discharge, parole, or
7 release and shall report the address to the Department of
8 Justice.

9 (2) The official in charge of the place of confinement
10 or hospital shall give one copy of the form to the person
11 and shall send one copy to the Department of Justice and
12 one copy to the appropriate law enforcement agency or
13 agencies having jurisdiction over the place the person
14 expects to reside upon discharge, parole, or release. If the
15 conviction that makes the person subject to this section
16 is a felony conviction, the official in charge shall, not later
17 than 45 days prior to the scheduled release of the person,
18 send one copy to the appropriate law enforcement
19 agency or agencies having local jurisdiction where the
20 person expects to reside upon discharge, parole, or
21 release; one copy to the prosecuting agency that
22 prosecuted the person; and one copy to the Department
23 of Justice. The official in charge of the place of
24 confinement shall retain one copy.

25 (c) Any person who is convicted in this state of the
26 commission or attempted commission of any of the
27 offenses specified in subdivision (a) and who is released
28 on probation or discharged upon payment of a fine shall,
29 prior to release or discharge, be informed of the duty to
30 register under this section by the probation department,
31 and a probation officer shall require the person to read
32 and sign any form that may be required by the
33 Department of Justice, stating that the duty of the person
34 to register under this section has been explained to him
35 or her. The probation officer shall obtain the address
36 where the person expects to reside upon release or
37 discharge and shall report within three days the address
38 to the Department of Justice. The probation officer shall
39 give one copy of the form to the person, send one copy to
40 the Department of Justice, and forward one copy to the

1 appropriate law enforcement agency or agencies having
2 local jurisdiction where the person expects to reside upon
3 his or her discharge, parole, or release.

4 (d) (1) Any person who, on or after January 1, 1986,
5 is discharged or paroled from the Department of the
6 Youth Authority to the custody of which he or she was
7 committed after having been adjudicated a ward of the
8 juvenile court pursuant to Section 602 of the Welfare and
9 Institutions Code because of the commission or
10 attempted commission of any offense described in
11 paragraph (3) shall be subject to registration under the
12 procedures of this section.

13 (2) Any person who is discharged or paroled from a
14 facility in another state that is equivalent to the
15 Department of the Youth Authority, to the custody of
16 which he or she was committed because of an offense
17 which, if committed or attempted in this state, would
18 have been punishable as one or more of the offenses
19 described in paragraph (3), shall be subject to
20 registration under the procedures of this section.

21 (3) Any person described in this subdivision who
22 committed an offense in violation of any of the following
23 provisions shall be required to register pursuant to this
24 section:

25 (A) Assault with intent to commit rape, sodomy, oral
26 copulation, or any violation of Section 264.1, 288, or 289
27 under Section 220.

28 (B) Any offense defined in paragraph (1), (2), (3),
29 (4), or (6) of subdivision (a) of Section 261, Section 264.1,
30 266c, or 267, paragraph (1) of subdivision (b) of, or
31 subdivision (c) or (d) of, Section 286, Section 288 or 288.5,
32 paragraph (1) of subdivision (b) of, or subdivision (c) or
33 (d) of, Section 288a, subdivision (a) of Section 289, or
34 Section 647.6.

35 (C) A violation of Section 207 or 209 committed with
36 the intent to violate Section 261, 286, 288, 288a, or 289.

37 (4) Prior to discharge or parole from the Department
38 of the Youth Authority, any person who is subject to
39 registration under this subdivision shall be informed of
40 the duty to register under the procedures set forth in this

1 section. Department of the Youth Authority officials shall
2 transmit the required forms and information to the
3 Department of Justice.

4 (5) All records specifically relating to the registration
5 in the custody of the Department of Justice, law
6 enforcement agencies, and other agencies or public
7 officials shall be destroyed when the person who is
8 required to register has his or her records sealed under
9 the procedures set forth in Section 781 of the Welfare and
10 Institutions Code. This subdivision shall not be construed
11 as requiring the destruction of other criminal offender or
12 juvenile records relating to the case that are maintained
13 by the Department of Justice, law enforcement agencies,
14 the juvenile court, or other agencies and public officials
15 unless ordered by a court under Section 781 of the
16 Welfare and Institutions Code.

17 (e) (1) On or after January 1, 1998, upon
18 incarceration, placement, or commitment, or prior to
19 release on probation, any person who is required to
20 register under this section shall preregister. The
21 preregistering official shall be the admitting officer at the
22 place of incarceration, placement, or commitment, or the
23 probation officer if the person is to be released on
24 probation. The preregistration shall consist of both of the
25 following:

26 (A) A preregistration statement in writing, signed by
27 the person, giving information that may be required by
28 the Department of Justice.

29 (B) The fingerprints and photograph of the person.

30 (C) Any person who is preregistered pursuant to this
31 subdivision is required to be preregistered only once.

32 (2) A person described in paragraph (2) of subdivision
33 (a) shall register, or reregister if the person has previously
34 registered, upon release from incarceration, placement,
35 or commitment, pursuant to paragraph (1) of subdivision
36 (a). The registration shall consist of all of the following:

37 (A) A statement in writing signed by the person,
38 giving information as may be required by the
39 Department of Justice.

40 (B) The fingerprints and photograph of the person.

1 (C) The license plate number of any vehicle owned
2 by, regularly driven by, or registered in the name of the
3 person.

4 (D) Notice to the person that, in addition to the
5 requirements of paragraph (4), he or she may have a duty
6 to register in any other state where he or she may
7 relocate.

8 (3) Within three days thereafter, the preregistering
9 official or the registering law enforcement agency or
10 agencies shall forward the statement, fingerprints,
11 photograph, and vehicle license plate number, if any, to
12 the Department of Justice.

13 (f) (1) If any person who is required to register
14 pursuant to this section changes his or her residence
15 address, the person shall inform, in writing within five
16 working days, the law enforcement agency or agencies
17 with which he or she last registered of the new address.
18 The law enforcement agency or agencies shall, within
19 three days after receipt of this information, forward a
20 copy of the change of address information to the
21 Department of Justice. The Department of Justice shall
22 forward appropriate registration data to the law
23 enforcement agency or agencies having local jurisdiction
24 of the new place of residence.

25 (2) If any person who is required to register pursuant
26 to this section changes his or her name, the person shall
27 inform, in person, the law enforcement agency or
28 agencies with which he or she is currently registered
29 within five working days. The law enforcement agency or
30 agencies shall forward a copy of this information to the
31 Department of Justice within three days of its receipt.

32 (g) (1) Any person who is required to register under
33 this section based on a misdemeanor conviction who
34 willfully violates any requirement of this section is guilty
35 of a misdemeanor punishable by imprisonment in a
36 county jail not exceeding one year.

37 (2) Except as provided in paragraph (5), any person
38 who is required to register under this section based on a
39 felony conviction who willfully violates any requirement
40 of this section or who has a prior conviction for the offense

1 of failing to register under this section and who
2 subsequently and willfully violates any requirement of
3 this section is guilty of a felony and shall be punished by
4 imprisonment in the state prison for 16 months, or two or
5 three years.

6 If probation is granted or if the imposition or execution
7 of sentence is suspended, it shall be a condition of the
8 probation or suspension that the person serve at least 90
9 days in a county jail. The penalty described in this
10 paragraph shall apply whether or not the person has been
11 released on parole or has been discharged from parole.

12 (3) Any person determined to be a mentally
13 disordered sex offender or who has been found guilty in
14 the guilt phase of trial for an offense for which registration
15 is required under this section, but who has been found not
16 guilty by reason of insanity in the sanity phase of the trial,
17 who willfully violates any requirement of this section is
18 guilty of a misdemeanor and shall be punished by
19 imprisonment in a county jail not exceeding one year. For
20 any second or subsequent willful violation of any
21 requirement of this section, the person is guilty of a felony
22 and shall be punished by imprisonment in the state prison
23 for 16 months, or two or three years.

24 (4) If, after discharge from parole, the person is
25 convicted of a felony as specified in this subdivision, he or
26 she shall be required to complete parole of at least one
27 year, in addition to any other punishment imposed under
28 this subdivision. A person convicted of a felony as
29 specified in this subdivision may be granted probation
30 only in the unusual case where the interests of justice
31 would best be served. When probation is granted under
32 this paragraph, the court shall specify on the record and
33 shall enter into the minutes the circumstances indicating
34 that the interests of justice would best be served by the
35 disposition.

36 (5) Any person who, as a sexually violent predator, as
37 defined in Section 6600 of the Welfare and Institutions
38 Code, fails to verify his or her registration every 90 days
39 as required pursuant to subparagraph (D) of paragraph
40 (1) of subdivision (a), shall be punished by imprisonment

1 in the state prison, or in a county jail not exceeding one
2 year.

3 (6) In addition to any other penalty imposed under
4 this subdivision, any person who is required pursuant to
5 subparagraph (B) of paragraph (1) of subdivision (a) to
6 update his or her registration every 90 days and willfully
7 fails to update his or her registration is guilty of a
8 misdemeanor and shall be punished by imprisonment in
9 a county jail not exceeding six months. Any subsequent
10 violation of this requirement that persons described in
11 subdivision (B) of paragraph (1) of subdivision (a) shall
12 update their registration every 90 days is also a
13 misdemeanor and shall be punished by imprisonment in
14 a county jail not exceeding six months.

15 (7) Any person who is required to register under this
16 section who willfully violates any requirement of this
17 section is guilty of a continuing offense.

18 (h) Whenever any person is released on parole or
19 probation and is required to register under this section
20 but fails to do so within the time prescribed, the parole
21 authority, the Youthful Offender Parole Board, or the
22 court, as the case may be, shall order the parole or
23 probation of the person revoked. For purposes of this
24 subdivision, "parole authority" has the same meaning as
25 described in Section 3000.

26 (i) Except as provided in subdivisions (m) and (n) and
27 Section 290.4, the statements, photographs, and
28 fingerprints required by this section shall not be open to
29 inspection by the public or by any person other than a
30 regularly employed peace officer or other law
31 enforcement officer.

32 (j) In any case in which a person who would be
33 required to register pursuant to this section for a felony
34 conviction is to be temporarily sent outside the institution
35 where he or she is confined on any assignment within a
36 city or county including firefighting, disaster control, or
37 of whatever nature the assignment may be, the local law
38 enforcement agency having jurisdiction over the place or
39 places where the assignment shall occur shall be notified
40 within a reasonable time prior to removal from the

1 institution. This subdivision shall not apply to any person
2 who is temporarily released under guard from the
3 institution where he or she is confined.

4 (k) As used in this section, “mentally disordered sex
5 offender” includes any person who has been determined
6 to be a sexual psychopath or a mentally disordered sex
7 offender under any provision which, on or before January
8 1, 1976, was contained in Division 6 (commencing with
9 Section 6000) of the Welfare and Institutions Code.

10 (l) (1) Every person who, prior to January 1, 1997, is
11 required to register under this section, shall be notified
12 whenever he or she next reregisters of the reduction of
13 the registration period from 14 to five working days. This
14 notice shall be provided in writing by the registering
15 agency or agencies. Failure to receive this notification
16 shall be a defense against the penalties prescribed by
17 subdivision (g) if the person did register within 14 days.

18 (2) Every person who, as a sexually violent predator,
19 as defined in Section 6600 of the Welfare and Institutions
20 Code, is required to verify his or her registration every 90
21 days, shall be notified wherever he or she next registers
22 of his or her increased registration obligations. This notice
23 shall be provided in writing by the registering agency or
24 agencies. Failure to receive this notice shall be a defense
25 against the penalties prescribed by paragraph (5) of
26 subdivision (g).

27 (m) (1) When a peace officer reasonably suspects,
28 based on information that has come to his or her attention
29 through information provided by any peace officer or
30 member of the public, that a child or other person may
31 be at risk from a sex offender convicted of a crime listed
32 in paragraph (1) of subdivision (a) of Section 290.4, a law
33 enforcement agency may, notwithstanding any other
34 provision of law, provide any of the information specified
35 in paragraph (2) of this subdivision about that registered
36 sex offender that the agency deems relevant and
37 necessary to protect the public, to the following persons,
38 agencies, or organizations the offender is likely to
39 encounter, including, but not limited to, the following:

1 (A) Public and private educational institutions, day
2 care establishments, and establishments and
3 organizations that primarily serve individuals likely to be
4 victimized by the offender.

5 (B) Other community members at risk.

6 (2) The information that may be disclosed pursuant to
7 this section includes the following:

8 (A) The offender's full name.

9 (B) The offender's known aliases.

10 (C) The offender's gender.

11 (D) The offender's race.

12 (E) The offender's physical description.

13 (F) The offender's photograph.

14 (G) The offender's date of birth.

15 (H) Crimes resulting in registration under this section.

16 (I) The offender's address, which must be verified
17 prior to publication.

18 (J) Description and license plate number of offender's
19 vehicles or vehicles the offender is known to drive.

20 (K) Type of victim targeted by the offender.

21 (L) Relevant parole or probation conditions, such as
22 one prohibiting contact with children.

23 (M) Dates of crimes resulting in classification under
24 this section.

25 (N) Date of release from confinement.

26 However, information disclosed pursuant to this
27 subdivision shall not include information that would
28 identify the victim.

29 (3) If a law enforcement agency discloses information
30 pursuant to this subdivision, it shall include, with the
31 disclosure, a statement that the purpose of the release of
32 the information is to allow members of the public to
33 protect themselves and their children from sex offenders.

34 (4) For purposes of this section, "likely to encounter"
35 means both of the following:

36 (A) That the agencies, organizations, or other
37 community members are in a location or in close
38 proximity to a location where the offender lives or is
39 employed, or that the offender visits or is likely to visit on
40 a regular basis.

1 (B) The types of interaction that ordinarily occur at
2 that location and other circumstances indicate that
3 contact with the offender is reasonably probable.

4 (5) For purposes of this section, “reasonably suspects”
5 means that it is objectively reasonable for a peace officer
6 to entertain a suspicion, based upon facts that could cause
7 a reasonable person in a like position, drawing when
8 appropriate on his or her training and experience, to
9 suspect that a child or other person is at risk.

10 (6) For purposes of this section, “at risk” means a
11 person is or may be exposed to a risk of becoming a victim
12 of a sex offense committed by the offender.

13 (7) A law enforcement agency may continue to
14 disclose information on an offender under this
15 subdivision for as long as the offender is included in
16 Section 290.4.

17 (n) In addition to the procedures set forth elsewhere
18 in this section, a designated law enforcement entity may
19 advise the public of the presence of high-risk sex
20 offenders in its community pursuant to this subdivision.

21 (1) For purposes of this subdivision:

22 (A) A high-risk sex offender is a person who has been
23 convicted of an offense specified in paragraph (1) of
24 subdivision (a) of Section 290.4 and also meets one of the
25 following criteria:

26 (i) Has been convicted of three or more violent sex
27 offenses, at least two of which were brought and tried
28 separately.

29 (ii) Has been convicted of two violent sex offenses and
30 one or more violent nonsex offenses, at least two of which
31 were brought and tried separately.

32 (iii) Has been convicted of one violent sex offense and
33 two or more violent nonsex offenses, at least two of which
34 were brought and tried separately.

35 (iv) Has been convicted of either two violent sex
36 offenses or one violent sex offense and one violent nonsex
37 offense, at least two of which were brought and tried
38 separately, and has been arrested on separate occasions
39 for three or more violent sex offenses, violent nonsex
40 offenses, or associated offenses.

1 (v) Has been adjudicated a sexually violent predator
2 pursuant to Article 4 (commencing with Section 6600) of
3 Chapter 2 of Part 2 of Division 6 of the Welfare and
4 Institutions Code.

5 (B) A violent sex offense means any offense defined in
6 Section 220, except attempt to commit mayhem, 261,
7 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of
8 great bodily injury during the commission of a sex offense,
9 as provided in Section 12022.8.

10 (C) A violent nonsex offense means any offense
11 defined in Section 187, subdivision (a) of Section 192, or
12 Section 203, 206, 207, or 236, provided that the offense is
13 a felony, subdivision (a) of Section 273a, Section 273d or
14 451, or attempted murder, as defined in Sections 187 and
15 664.

16 (D) An associated offense means any offense defined
17 in Section 243.4, provided that the offense is a felony,
18 Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314,
19 Section 459, provided the offense is of the first degree,
20 Section 597 or 646.9, subdivision (d), (h), or (i) of Section
21 647, Section 653m, or infliction of great bodily injury
22 during the commission of a felony, as defined in Section
23 *12022.53 or 12022.7*.

24 (E) For purposes of subparagraphs (B) to (D),
25 inclusive, an arrest or conviction for the statutory
26 predecessor of any of the enumerated offenses, or an
27 arrest or conviction in any other jurisdiction for any
28 offense which, if committed or attempted in this state,
29 would have been punishable as one or more of the
30 offenses described in those subparagraphs, is to be
31 considered in determining whether an offender is a
32 high-risk sex offender.

33 (F) For purposes of subparagraphs (B) to (D),
34 inclusive, an arrest as a juvenile or an adjudication as a
35 ward of the juvenile court within the meaning of Section
36 602 of the Welfare and Institutions Code for any of the
37 offenses described in those subparagraphs is to be
38 considered in determining whether an offender is a
39 high-risk sex offender.



(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall

1 provide to each chief of police and sheriff in the state, and
2 to any other designated law enforcement entity upon
3 request, the following information regarding each
4 identified high-risk sexual offender: full name; known
5 aliases; gender; race; physical description; photograph;
6 date of birth; and crimes resulting in classification under
7 this section.

8 (3) The Department of Justice and any designated law
9 enforcement entity to which notice has been given
10 pursuant to paragraph (2) may cause to be made public,
11 by whatever means the agency deems necessary to
12 ensure the public safety, based upon information
13 available to the agency concerning a specific person,
14 including, but not limited to, the information described
15 in paragraph (2); the offender's address, which shall be
16 verified prior to publication; description and license plate
17 number of the offender's vehicles or vehicles the offender
18 is known to drive; type of victim targeted by the offender;
19 relevant parole or probation conditions, such as one
20 prohibiting contact with children; dates of crimes
21 resulting in classification under this section; and date of
22 release from confinement; but excluding information
23 that would identify the victim.

24 (o) Agencies disseminating information to the public
25 pursuant to Section 290.4 shall maintain records of those
26 persons requesting to view the CD-ROM or other
27 electronic media for a minimum of five years. Agencies
28 disseminating information to the public pursuant to
29 subdivision (n) shall maintain records of the means and
30 dates of dissemination for a minimum of five years.

31 (p) Law enforcement agencies and employees of law
32 enforcement agencies shall be immune from liability for
33 good faith conduct under this section. For the purposes
34 of this section, "law enforcement agency" means the
35 Attorney General, any district attorney, and any state
36 agency expressly authorized by statute to investigate or
37 prosecute law violators.

38 (q) Any person who uses information disclosed
39 pursuant to this section to commit a felony shall be
40 punished, in addition and consecutive to any other

1 punishment, by a five-year term of imprisonment in the
2 state prison. Any person who uses information disclosed
3 pursuant to this section to commit a misdemeanor shall be
4 subject to, in addition to any other penalty or fine
5 imposed, a fine of not less than five hundred dollars
6 (\$500) and not more than one thousand dollars (\$1,000).

7 (r) The registration and public notification provisions
8 of this section are applicable to every person described in
9 this section, without regard to when his or her crimes
10 were committed or his or her duty to register pursuant to
11 this section arose, and to every offense described in this
12 section, regardless of when it was committed.

13 *SEC. 3. Section 422.75 of the Penal Code is amended*
14 *to read:*

15 422.75. (a) Except in the case of a person punished
16 under Section 422.7, a person who commits a felony or
17 attempts to commit a felony because of the victim's race,
18 color, religion, nationality, country of origin, ancestry,
19 disability, or sexual orientation, or because he or she
20 perceives that the victim has one or more of those
21 characteristics, shall receive an additional term of one,
22 two, or three years in the state prison, at the court's
23 discretion.

24 (b) Except in the case of a person punished under
25 Section 422.7 or subdivision (a) of this section, any person
26 who commits a felony or attempts to commit a felony
27 against the property of a public agency or private
28 institution, including a school, educational facility, library
29 or community center, meeting hall, place of worship, or
30 offices of an advocacy group, or the grounds adjacent to,
31 owned, or rented by the public agency or private
32 institution, because the property of the public agency or
33 private institution is identified or associated with a person
34 or group of an identifiable race, color, religion,
35 nationality, country of origin, ancestry, gender, disability,
36 or sexual orientation, shall receive an additional term of
37 one, two, or three years in the state prison, at the court's
38 discretion.

39 (c) Except in the case of a person punished under
40 Section 422.7 or subdivision (a) or (b) of this section, any

1 person who commits a felony, or attempts to commit a
2 felony, because of the victim's race, color, religion,
3 nationality, country of origin, ancestry, gender, disability,
4 or sexual orientation, or because he or she perceives that
5 the victim has one or more of those characteristics, and
6 who voluntarily acted in concert with another person,
7 either personally or by aiding and abetting another
8 person, shall receive an additional two, three, or four
9 years in the state prison, at the court's discretion.

10 (d) For the purpose of imposing an additional term
11 under subdivision (a) or (c), it shall be a factor in
12 aggravation that the defendant personally used a firearm
13 in the commission of the offense. Nothing in this
14 subdivision shall preclude a court from also imposing a
15 sentence enhancement pursuant to Section 12022.5,
16 12022.53, or 12022.55, or any other law.

17 (e) A person who is punished pursuant to this section
18 also shall receive an additional term of one year in the
19 state prison for each prior felony conviction on charges
20 brought and tried separately in which it was found by the
21 trier of fact or admitted by the defendant that the crime
22 was committed because of the victim's race, color,
23 religion, nationality, country of origin, ancestry,
24 disability, or sexual orientation, or that the crime was
25 committed because the defendant perceived that the
26 victim had one or more of those characteristics. This
27 additional term shall only apply where a sentence
28 enhancement is not imposed pursuant to Section 667 or
29 667.5.

30 (f) Any additional term authorized by this section shall
31 not be imposed unless the allegation is charged in the
32 accusatory pleading and admitted by the defendant or
33 found to be true by the trier of fact.

34 (g) Any additional term imposed pursuant to this
35 section shall be in addition to any other punishment
36 provided by law.

37 (h) Notwithstanding any other law, the court may
38 strike any additional term imposed by this section if the
39 court determines that there are mitigating circumstances

1 and states on the record the reasons for striking the
2 additional punishment.

3 *SEC. 4. Section 667.5 of the Penal Code is amended to*
4 *read:*

5 667.5. Enhancement of prison terms for new offenses
6 because of prior prison terms shall be imposed as follows:

7 (a) Where one of the new offenses is one of the violent
8 felonies specified in subdivision (c), in addition and
9 consecutive to any other prison terms therefor, the court
10 shall impose a three-year term for each prior separate
11 prison term served by the defendant where the prior
12 offense was one of the violent felonies specified in
13 subdivision (c). However, no additional term shall be
14 imposed under this subdivision for any prison term
15 served prior to a period of 10 years in which the defendant
16 remained free of both prison custody and the commission
17 of an offense which results in a felony conviction.

18 (b) Except where subdivision (a) applies, where the
19 new offense is any felony for which a prison sentence is
20 imposed, in addition and consecutive to any other prison
21 terms therefor, the court shall impose a one-year term for
22 each prior separate prison term served for any felony;
23 provided that no additional term shall be imposed under
24 this subdivision for any prison term served prior to a
25 period of five years in which the defendant remained free
26 of both prison custody and the commission of an offense
27 which results in a felony conviction.

28 (c) For the purpose of this section, “violent felony”
29 means any of the following:

30 (1) Murder or voluntary manslaughter.

31 (2) Mayhem.

32 (3) Rape as defined in paragraph (2) or (6) of
33 subdivision (a) of Section 261 or paragraph (1) or (4) of
34 subdivision (a) of Section 262.

35 (4) Sodomy by force, violence, duress, menace, or fear
36 of immediate and unlawful bodily injury on the victim or
37 another person.

38 (5) Oral copulation by force, violence, duress, menace,
39 or fear of immediate and unlawful bodily injury on the
40 victim or another person.

1 (6) Lewd acts on a child under the age of 14 years as
2 defined in Section 288.

3 (7) Any felony punishable by death or imprisonment
4 in the state prison for life.

5 (8) Any felony in which the defendant inflicts great
6 bodily injury on any person other than an accomplice
7 which has been charged and proved as provided for in
8 Section 12022.7 or 12022.9 on or after July 1, 1977, or as
9 specified prior to July 1, 1977, in Sections 213, 264, and 461,
10 or any felony in which the defendant uses a firearm which
11 use has been charged and proved as provided in Section
12 12022.5, ~~12022.53~~, or 12022.55.

13 (9) Any robbery perpetrated in an inhabited dwelling
14 house, vessel, as defined in Section 21 of the Harbors and
15 Navigation Code, which is inhabited and designed for
16 habitation, an inhabited floating home as defined in
17 subdivision (d) of Section 18075.55 of the Health and
18 Safety Code, an inhabited trailer coach, as defined in the
19 Vehicle Code, or in the inhabited portion of any other
20 building, wherein it is charged and proved that the
21 defendant personally used a deadly or dangerous
22 weapon, as provided in subdivision (b) of Section 12022,
23 in the commission of that robbery.

24 (10) Arson, in violation of subdivision (a) of Section
25 451.

26 (11) The offense defined in subdivision (a) of Section
27 289 where the act is accomplished against the victim's will
28 by force, violence, duress, menace, or fear of immediate
29 and unlawful bodily injury on the victim or another
30 person.

31 (12) Attempted murder.

32 (13) A violation of Section 12308.

33 (14) Kidnapping, in violation of subdivision (b) of
34 Section 207.

35 (15) Kidnapping, as punished in subdivision (b) of
36 Section 208.

37 (16) Continuous sexual abuse of a child, in violation of
38 Section 288.5.

39 (17) Carjacking, as defined in subdivision (a) of
40 Section 215, if it is charged and proved that the defendant

1 personally used a dangerous or deadly weapon as
2 provided in subdivision (b) of Section 12022 in the
3 commission of the carjacking.

4 (18) Any robbery of the first degree punishable
5 pursuant to subparagraph (A) of paragraph (1) of
6 subdivision (a) of Section 213.

7 (19) A violation of Section 264.1.

8 (20) *A violation of Section 12022.53.*

9 The Legislature finds and declares that these specified
10 crimes merit special consideration when imposing a
11 sentence to display society's condemnation for these
12 extraordinary crimes of violence against the person.

13 (d) For the purposes of this section, the defendant
14 shall be deemed to remain in prison custody for an offense
15 until the official discharge from custody or until release
16 on parole, whichever first occurs, including any time
17 during which the defendant remains subject to
18 reimprisonment for escape from custody or is
19 reimprisoned on revocation of parole. The additional
20 penalties provided for prior prison terms shall not be
21 imposed unless they are charged and admitted or found
22 true in the action for the new offense.

23 (e) The additional penalties provided for prior prison
24 terms shall not be imposed for any felony for which the
25 defendant did not serve a prior separate term in state
26 prison.

27 (f) A prior conviction of a felony shall include a
28 conviction in another jurisdiction for an offense which, if
29 committed in California, is punishable by imprisonment
30 in the state prison if the defendant served one year or
31 more in prison for the offense in the other jurisdiction. A
32 prior conviction of a particular felony shall include a
33 conviction in another jurisdiction for an offense which
34 includes all of the elements of the particular felony as
35 defined under California law if the defendant served one
36 year or more in prison for the offense in the other
37 jurisdiction.

38 (g) A prior separate prison term for the purposes of
39 this section shall mean a continuous completed period of
40 prison incarceration imposed for the particular offense

1 alone or in combination with concurrent or consecutive
2 sentences for other crimes, including any
3 reimprisonment on revocation of parole which is not
4 accompanied by a new commitment to prison, and
5 including any reimprisonment after an escape from
6 incarceration.

7 (h) Serving a prison term includes any confinement
8 time in any state prison or federal penal institution as
9 punishment for commission of an offense, including
10 confinement in a hospital or other institution or facility
11 credited as service of prison time in the jurisdiction of the
12 confinement.

13 (i) For the purposes of this section, a commitment to
14 the State Department of Mental Health as a mentally
15 disordered sex offender following a conviction of a felony,
16 which commitment exceeds one year in duration, shall be
17 deemed a prior prison term.

18 (j) For the purposes of this section, when a person
19 subject to the custody, control, and discipline of the
20 Director of Corrections is incarcerated at a facility
21 operated by the Department of the Youth Authority, that
22 incarceration shall be deemed to be a term served in state
23 prison.

24 (k) Notwithstanding subdivisions (d) and (g) or any
25 other provision of law, where one of the new offenses is
26 committed while the defendant is temporarily removed
27 from prison pursuant to Section 2690 or while the
28 defendant is transferred to a community facility pursuant
29 to Section 3416, 6253, or 6263, or while the defendant is on
30 furlough pursuant to Section 6254, the defendant shall be
31 subject to the full enhancements provided for in this
32 section.

33 This subdivision shall not apply when a full, separate,
34 and consecutive term is imposed pursuant to any other
35 provision of law.

36 *SEC. 5. Section 667.61 of the Penal Code is amended*
37 *to read:*

38 667.61. (a) A person who is convicted of an offense
39 specified in subdivision (c) under one or more of the
40 circumstances specified in subdivision (d) or under two



1 or more of the circumstances specified in subdivision (e)
2 shall be punished by imprisonment in the state prison for
3 life and shall not be eligible for release on parole for 25
4 years except as provided in subdivision (j).

5 (b) Except as provided in subdivision (a), a person
6 who is convicted of an offense specified in subdivision (c)
7 under one of the circumstances specified in subdivision
8 (e) shall be punished by imprisonment in the state prison
9 for life and shall not be eligible for release on parole for
10 15 years except as provided in subdivision (j).

11 (c) This section shall apply to any of the following
12 offenses:

13 (1) A violation of paragraph (2) of subdivision (a) of
14 Section 261.

15 (2) A violation of paragraph (1) of subdivision (a) of
16 Section 262.

17 (3) A violation of Section 264.1.

18 (4) A violation of subdivision (b) of Section 288.

19 (5) A violation of subdivision (a) of Section 289.

20 (6) Sodomy or oral copulation in violation of Section
21 286 or 288a by force, violence, duress, menace, or fear of
22 immediate and unlawful bodily injury on the victim or
23 another person.

24 (7) A violation of subdivision (a) of Section 288, unless
25 the defendant qualifies for probation under subdivision
26 (c) of Section 1203.066.

27 (d) The following circumstances shall apply to the
28 offenses specified in subdivision (c):

29 (1) The defendant has been previously convicted of an
30 offense specified in subdivision (c), including an offense
31 committed in another jurisdiction that includes all of the
32 elements of an offense specified in subdivision (c).

33 (2) The defendant kidnapped the victim of the
34 present offense and the movement of the victim
35 substantially increased the risk of harm to the victim over
36 and above that level of risk necessarily inherent in the
37 underlying offense in subdivision (c).

38 (3) The defendant inflicted aggravated mayhem or
39 torture on the victim or another person in the commission
40 of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary, as defined in subdivision (a) of Section 460, or during the commission of a burglary of a building, including any commercial establishment, which was then closed to the public, in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7 or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or firearm in the commission of the present offense in violation of Section 12022, 12022.3, ~~or~~ 12022.5, *or 12022.53*.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.

(7) The defendant administered a controlled substance to the victim by force, violence, or fear in the commission of the present offense in violation of Section 12022.75.

(8) *The defendant intentionally confined the victim in a manner that exposed the victim to a substantial likelihood of death.*

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) which are required for the punishment provided in subdivision (a) or (b) to

1 apply have been pled and proved, that circumstance or
2 those circumstances shall be used as the basis for imposing
3 the term provided in subdivision (a) or (b) rather than
4 being used to impose the punishment authorized under
5 any other law, unless another law provides for a greater
6 penalty. However, if any additional circumstance or
7 circumstances specified in subdivision (d) or (e) have
8 been pled and proved, the minimum number of
9 circumstances shall be used as the basis for imposing the
10 term provided in subdivision (a), and any other
11 additional circumstance or circumstances shall be used to
12 impose any punishment or enhancement authorized
13 under any other law. Notwithstanding any other law, the
14 court shall not strike any of the circumstances specified
15 in subdivision (d) or (e).

16 (g) The term specified in subdivision (a) or (b) shall
17 be imposed on the defendant once for any offense or
18 offenses committed against a single victim during a single
19 occasion. If there are multiple victims during a single
20 occasion, the term specified in subdivision (a) or (b) shall
21 be imposed on the defendant once for each separate
22 victim. Terms for other offenses committed during a
23 single occasion shall be imposed as authorized under any
24 other law, including Section 667.6, if applicable.

25 (h) Probation shall not be granted to, nor shall the
26 execution or imposition of sentence be suspended for, any
27 person who is subject to punishment under this section
28 for any offense specified in paragraphs (1) to (6),
29 inclusive, of subdivision (c).

30 (i) For the penalties provided in this section to apply,
31 the existence of any fact required under subdivision (d)
32 or (e) shall be alleged in the accusatory pleading and
33 either admitted by the defendant in open court or found
34 to be true by the trier of fact.

35 (j) Article 2.5 (commencing with Section 2930) of
36 Chapter 7 of Title 1 of Part 3 shall apply to reduce the
37 minimum term of 25 years in the state prison imposed
38 pursuant to subdivision (a) or 15 years in the state prison
39 imposed pursuant to subdivision (b). However, in no case
40 shall the minimum term of 25 or 15 years be reduced by

1 more than 15 percent for credits granted pursuant to
2 Section 2933, 4019, or any other law providing for conduct
3 credit reduction. In no case shall any person who is
4 punished under this section be released on parole prior to
5 serving at least 85 percent of the minimum term of 25 or
6 15 years in the state prison.

7 *SEC. 6. Section 667.7 of the Penal Code is amended to*
8 *read:*

9 667.7. (a) Any person convicted of a felony in which
10 the person inflicted great bodily injury as provided in
11 Section 12022.7, or personally used force which was likely
12 to produce great bodily injury, who has served two or
13 more prior separate prison terms as defined in Section
14 667.5 for the crime of murder; attempted murder;
15 voluntary manslaughter; mayhem; rape by force,
16 violence, or fear of immediate and unlawful bodily injury
17 on the victim or another person; oral copulation by force,
18 violence, duress, menace, or fear of immediate and
19 unlawful bodily injury on the victim or another person;
20 sodomy by force, violence, duress, menace, or fear of
21 immediate and unlawful bodily injury on the victim or
22 another person; lewd acts on a child under the age of 14
23 years by use of force, violence, duress, menace, or fear of
24 immediate and unlawful bodily injury on the victim or
25 another person; a violation of subdivision (a) of Section
26 289 where the act is accomplished against the victim's will
27 by means of force, violence, duress, menace, or fear of
28 immediate and unlawful bodily injury on the victim or
29 another person; kidnapping as punished in former
30 subdivision (d) of Section 208, or for ransom, extortion, or
31 robbery; robbery involving the use of force or a deadly
32 weapon; assault with intent to commit murder; assault
33 with a deadly weapon; carjacking involving the use of a
34 deadly weapon; assault with intent to commit murder;
35 assault with a deadly weapon; assault with a force likely
36 to produce great bodily injury; assault with intent to
37 commit rape, sodomy, oral copulation, penetration of a
38 vaginal or anal opening in violation of Section 289, or lewd
39 and lascivious acts on a child; arson of a structure; escape
40 or attempted escape by an inmate with force or violence

1 in violation of subdivision (a) of Section 4530, or of Section
 2 4532; exploding a device with intent to murder in
 3 violation of Section 12308; exploding a destructive device
 4 which causes bodily injury in violation of Section 12309,
 5 or mayhem or great bodily injury in violation of Section
 6 12310; exploding a destructive device with intent to
 7 injure, intimidate, or terrify, in violation of Section
 8 12303.3; any felony in which the person inflicted great
 9 bodily injury as provided in Section 12022.53 or 12022.7;
 10 or any felony punishable by death or life imprisonment
 11 with or without the possibility of parole is a habitual
 12 offender and shall be punished as follows:

13 (1) A person who served two prior separate prison
 14 terms shall be punished by imprisonment in the state
 15 prison for life and shall not be eligible for release on
 16 parole for 20 years, or the term determined by the court
 17 pursuant to Section 1170 for the underlying conviction,
 18 including any enhancement applicable under Chapter
 19 4.5 (commencing with Section 1170) of Title 7 of Part 2,
 20 or any period prescribed by Section 190 or 3046,
 21 whichever is greatest. Article 2.5 (commencing with
 22 Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply
 23 to reduce any minimum term in a state prison imposed
 24 pursuant to this section, but the person shall not
 25 otherwise be released on parole prior to that time.

26 (2) Any person convicted of a felony specified in this
 27 subdivision who has served three or more prior separate
 28 prison terms, as defined in Section 667.5, for the crimes
 29 specified in subdivision (a) of this section shall be
 30 punished by imprisonment in the state prison for life
 31 without the possibility of parole.

32 (b) This section shall not prevent the imposition of the
 33 punishment of death or imprisonment for life without the
 34 possibility of parole. No prior prison term shall be used for
 35 this determination which was served prior to a period of
 36 10 years in which the person remained free of both prison
 37 custody and the commission of an offense which results
 38 in a felony conviction. As used in this section, a
 39 commitment to the Department of the Youth Authority
 40 after conviction for a felony shall constitute a prior prison

1 term. The term imposed under this section shall be
2 imposed only if the prior prison terms are alleged under
3 this section in the accusatory pleading, and either
4 admitted by the defendant in open court, or found to be
5 true by the jury trying the issue of guilt or by the court
6 where guilt is established by a plea of guilty or nolo
7 contendere or by a trial by the court sitting without a jury.

8 *SEC. 7.* Section 667.71 of the Penal Code is amended
9 to read:

10 667.71. (a) For the purpose of this section, a habitual
11 sexual offender is a person who has been previously
12 convicted of one or more of the offenses listed in
13 subdivision (d) and who is convicted in the present
14 proceeding of one of those offenses.

15 (b) A habitual sexual offender is punishable by
16 imprisonment in the state prison for 25 years to life.
17 Article 2.5 (commencing with Section 2930) of Chapter
18 7 of Title 1 of Part 3 shall apply to reduce any minimum
19 term of 25 years in the state prison imposed pursuant to
20 this section. However, in no case shall the minimum term
21 of 25 years be reduced by more than 15 percent for credits
22 granted pursuant to Section 2933, 4019, or any other law
23 providing for conduct credit reduction. In no case shall
24 any person who is punished under this section be released
25 on parole prior to serving at least 85 percent of the
26 minimum term of 25 years in the state prison.

27 (c) At the request of the prosecutor and in lieu of the
28 punishment specified in subdivision (b), the court shall
29 order that the defendant be punished pursuant to Section
30 667.6, 667.61, 667.7, or 1170.1, if applicable.

31 (d) This section shall apply to persons found guilty of
32 any of the following offenses:

33 (1) Paragraph (2) of subdivision (a) of Section 261.

34 (2) Paragraph (1) of subdivision (a) of Section 262,
35 Section 264.1.

36 (3) Subdivision (a) or (b) of Section 288.

37 (4) Subdivision (a) of Section 289.

38 (5) Sodomy or oral copulation committed in violation
39 of Section 286 or 288a by force, violence, duress, menace,

1 or fear of immediate and unlawful bodily injury on the
2 victim or another person.

3 (6) Kidnapping, in violation of subdivision (b) of
4 Section 207.

5 (7) Kidnapping, as punished in former subdivision (d)
6 of Section 208.

7 (8) Kidnaping in violation of Section 209 with the
8 intent to commit rape, spousal rape, oral copulation, or
9 sodomy or rape by instrument in violation of Section 289.

10 (9) An offense committed in another jurisdiction that
11 has all the elements of an offense specified in paragraphs
12 (1) to (8), inclusive, of this subdivision.

13 (e) This section shall apply only if the defendant's
14 status as a habitual sexual offender is alleged in the
15 information, and either admitted by the defendant in
16 open court, or found to be true by the jury trying the issue
17 of guilt or by the court where guilt is established by a plea
18 of guilty or nolo contendere or by trial by court sitting
19 without a jury.

20 ~~SEC. 2.~~

21 *SEC. 8.* Section 1170.1 of the Penal Code is amended
22 to read:

23 1170.1. (a) Except as provided in subdivisions (b)
24 and (c), and subject to Section 654, when any person is
25 convicted of two or more felonies, whether in the same
26 proceeding or court or in different proceedings or courts,
27 and whether by judgment rendered by the same or by a
28 different court, and a consecutive term of imprisonment
29 is imposed under Sections 669 and 1170, the aggregate
30 term of imprisonment for all these convictions shall be
31 the sum of the principal term, the subordinate term, and
32 any additional term imposed for applicable
33 enhancements for prior convictions, prior prison terms,
34 and Section 12022.1. The principal term shall consist of
35 the greatest term of imprisonment imposed by the court
36 for any of the crimes, including any term imposed for
37 applicable specific enhancements. The subordinate term
38 for each consecutive offense which is not a "violent
39 felony," as defined in subdivision (c) of Section 667.5,
40 shall consist of one-third of the middle term of

1 imprisonment prescribed for each other felony
2 conviction for an offense that is not a violent felony for
3 which a consecutive term of imprisonment is imposed,
4 and shall exclude any specific enhancements. Except as
5 otherwise provided by law, the total of subordinate terms
6 for those consecutive offenses which are not “violent
7 felonies,” as defined in subdivision (c) of Section 667.5,
8 shall not exceed five years. The subordinate term for each
9 consecutive offense which is a “violent felony,” as defined
10 in any paragraph of subdivision (c) of Section 667.5, shall
11 consist of one-third of the middle term of imprisonment
12 prescribed for each other felony conviction for an offense
13 that is a violent felony for which a consecutive term of
14 imprisonment is imposed, and shall include one-third of
15 the term imposed for any specific enhancements
16 applicable to those subordinate offenses.

17 (b) When a consecutive term of imprisonment is
18 imposed under Sections 669 and 1170 for two or more
19 convictions for kidnapping, as defined in Section 207,
20 involving separate victims, the aggregate term shall be
21 calculated as provided in subdivision (a), except that the
22 subordinate term for each subsequent kidnapping
23 conviction shall consist of the full middle term for each
24 kidnapping conviction for which a consecutive term of
25 imprisonment is imposed and shall include the full term
26 imposed for specific enhancements applicable to those
27 subordinate offenses. The total of the subordinate terms
28 imposed pursuant to this subdivision may exceed five
29 years.

30 (c) In the case of any person convicted of one or more
31 felonies committed while the person is confined in a state
32 prison or is subject to reimprisonment for escape from
33 custody and the law either requires the terms to be served
34 consecutively or the court imposes consecutive terms, the
35 term of imprisonment for all the convictions which the
36 person is required to serve consecutively shall commence
37 from the time the person would otherwise have been
38 released from prison. If the new offenses are consecutive
39 with each other, the principal and subordinate terms shall
40 be calculated as provided in subdivision (a), except that

1 the total of subordinate terms may exceed five years. This
2 subdivision shall be applicable in cases of convictions of
3 more than one offense in different proceedings, and
4 convictions of more than one offense in the same or
5 different proceedings.

6 (d) When the court imposes a prison sentence for a
7 felony pursuant to Section 1170, the court shall also
8 impose the additional terms provided for any applicable
9 enhancements. The court shall also impose any other
10 additional term that the court determines in its discretion
11 or as required by law shall run consecutive to the term
12 imposed under Section 1170. In considering the
13 imposition of the additional term, the court shall apply
14 the sentencing rules of the Judicial Council.

15 (e) All enhancements shall be alleged in the
16 accusatory pleading and either admitted by the
17 defendant in open court or found to be true by the trier
18 of fact.

19 (f) When two or more enhancements may be imposed
20 for being armed with or using a dangerous or deadly
21 weapon or a firearm in the commission of a single offense,
22 only the greatest of those enhancements shall be imposed
23 for that offense. This subdivision shall not limit the
24 imposition of any other enhancements applicable to that
25 offense, including an enhancement for the infliction of
26 great bodily injury.

27 (g) When two or more enhancements may be imposed
28 for the infliction of great bodily injury in the commission
29 of a single offense, only the greatest of those
30 enhancements shall be imposed for that offense. This
31 subdivision shall not limit the imposition of any other
32 enhancements applicable to that offense, including an
33 enhancement for being armed with or using a dangerous
34 or deadly weapon or firearm.

35 (h) For any violation of paragraph (2), (3), or (6) of
36 subdivision (a) of Section 261, paragraph (1) or (4) of
37 subdivision (a) of Section 262, Section 264.1, subdivision
38 (b) of Section 288, subdivision (a) of Section 289, or
39 sodomy or oral copulation by force, violence, duress,
40 menace, or fear of immediate and unlawful bodily injury

1 on the victim or another person as provided in Section 286
2 or 288a, the number of enhancements that may be
3 imposed shall not be limited, regardless of whether the
4 enhancements are pursuant to this section, Section 667.6,
5 or some other section of law. Each of the enhancements
6 shall be a full and separately served enhancement and
7 shall not be merged with any term or with any other
8 enhancement.

9 ~~SEC. 3.~~

10 *SEC. 9. Section 1174.4 of the Penal Code is amended*
11 *to read:*

12 1174.4. (a) Persons eligible for participation in this
13 alternative sentencing program shall meet all of the
14 following criteria:

15 (1) Pregnant women with an established history of
16 substance abuse, or pregnant or parenting women with
17 an established history of substance abuse who have one or
18 more children under six years old at the time of entry into
19 the program. For women with children, at least one
20 eligible child shall reside with the mother in the facility.

21 (2) Never served a prior prison term for, nor been
22 convicted in the present proceeding of, committing or
23 attempting to commit, any of the following offenses:

24 (A) Murder or voluntary manslaughter.

25 (B) Mayhem.

26 (C) Rape.

27 (D) Kidnapping.

28 (E) Sodomy by force, violence, duress, menace, or fear
29 of immediate and unlawful bodily injury on the victim or
30 another person.

31 (F) Oral copulation by force, violence, duress,
32 menace, or fear of immediate and unlawful bodily injury
33 on the victim or another person.

34 (G) Lewd acts on a child under 14 years of age, as
35 defined in Section 288.

36 (H) Any felony punishable by death or imprisonment
37 in the state prison for life.

38 (I) Any felony in which the defendant inflicts great
39 bodily injury on any person, other than an accomplice,
40 that has been charged and proved as provided for in

1 Section 12022.53, 12022.7 or 12022.9, or any felony in
2 which the defendant uses a firearm, as provided in
3 Section 12022.5, 12022.53, or 12022.55, in which the use has
4 been charged and proved.

5 (J) Robbery.

6 (K) Any robbery perpetrated in an inhabited dwelling
7 house or trailer coach as defined in the Vehicle Code, or
8 in the inhabited portion of any other building, wherein it
9 is charged and proved that the defendant personally used
10 a deadly or dangerous weapon, as provided in subdivision
11 (b) of Section 12022, in the commission of that robbery.

12 (L) Arson in violation of subdivision (a) of Section 451.

13 (M) Penetration by a foreign object in violation of
14 subdivision (a) of Section 289 if the act is accomplished
15 against the victim's will by force, violence, duress,
16 menace, or fear of immediate and unlawful bodily injury
17 on the victim or another person.

18 (N) Rape or penetration of genital or anal openings by
19 a foreign object in concert, in violation of Section 264.1.

20 (O) Continual sexual abuse of a child in violation of
21 Section 288.5.

22 (P) Assault with intent to commit mayhem, rape,
23 sodomy, oral copulation, rape in concert, with another,
24 lascivious acts upon a child, or penetration by a foreign
25 object.

26 (Q) Assault with a deadly weapon or with force likely
27 to produce great bodily injury in violation of subdivision
28 (a) of Section 245.

29 (R) Any violent felony defined in Section 667.5.

30 (S) A violation of Section 12022.

31 (T) A violation of Section 12308.

32 (U) Burglary of the first degree.

33 (V) A violation of Section 11351, 11351.5, 11352, 11353,
34 11358, 11359, 11360, 11370.1, 11370.6, 11378, 11378.5, 11379,
35 11379.5, 11379.6, 11380, or 11383 of the Health and Safety
36 Code.

37 (3) Has not been sentenced to state prison for a term
38 exceeding 36 months.

39 (b) Prior to sentencing, if the court proposes to give
40 consideration to a placement, the court shall consider a

1 written evaluation by the probation department, which
2 shall include the following:

3 (1) Whether the defendant is eligible for participation
4 pursuant to this section.

5 (2) Whether participation by the defendant and her
6 eligible children is deemed to be in the best interests of
7 the children.

8 (3) Whether the defendant is amenable to treatment
9 for substance abuse and would benefit from participation
10 in the program.

11 (4) Whether the program is deemed to be in the best
12 interests of an eligible child of the defendant, as
13 determined by a representative of the appropriate child
14 welfare services agency of the county if the child is a
15 dependent child of the juvenile court pursuant to Section
16 300 of the Welfare and Institutions Code.

17 (c) The district attorney shall make a
18 recommendation to the court as to whether or not the
19 defendant would benefit from the program, which the
20 court shall consider in making its decision. If the court's
21 decision is without the concurrence of the district
22 attorney, the court shall specify its reasons in writing and
23 enter them into the record.

24 (d) If the court determines that the defendant may
25 benefit from participation in this program, the court may
26 impose a state prison sentence with the recommendation
27 that the defendant participate in the program pursuant
28 to this chapter. The court shall notify the department
29 within 48 hours of imposition of this sentence.

30 (e) The Director of Corrections shall consider the
31 court's recommendation in making a determination on
32 the inmate's placement in the program.

33 (f) Women accepted for the program by the Director
34 of Corrections shall be delivered by the county, pursuant
35 to Section 1202a, to the facility selected by the
36 department. Before the director accepts a woman for the
37 program, the county shall provide to the director the
38 necessary information to determine her eligibility and
39 appropriate placement status. Priority for services and
40 aftercare shall be given to inmates who are incarcerated



1 in a county, or adjacent to a county, in which a program
2 facility is located.

3 (g) Prior to being admitted to the program, each
4 participant shall voluntarily sign an agreement specifying
5 the terms and conditions of participation in the program.

6 (h) The department may refer inmates back to the
7 sentencing court if the department determines that an
8 eligible inmate has not been recommended for the
9 program. The department shall refer the inmate to the
10 court by an evaluative report so stating the department's
11 assessment of eligibility, and requesting a
12 recommendation by the court.

13 (i) Women who successfully complete the program,
14 including the minimum of one year of transition services
15 under intensive parole supervision, shall be discharged
16 from parole. Women who do not successfully complete
17 the program shall be returned to the state prison where
18 they shall serve their original sentences. These persons
19 shall receive full credit against their original sentences for
20 the time served in the program, pursuant to Section 2933.

21 *SEC. 10. Section 1269b of the Penal Code is amended*
22 *to read:*

23 1269b. (a) The officer in charge of a jail where an
24 arrested person is held in custody, an officer of a sheriff's
25 department or police department of a city who is in
26 charge of a jail or employed at a fixed police or sheriff's
27 facility and is acting under an agreement with the agency
28 which keeps the jail wherein an arrested person is held in
29 custody, an employee of a sheriff's department or police
30 department of a city who is assigned by such department
31 to collect bail, the clerk of the justice or municipal court
32 of the judicial district in which the offense was alleged to
33 have been committed, and the clerk of the superior court
34 in which the case against the defendant is pending may
35 approve and accept bail in the amount fixed by the
36 warrant of arrest, schedule of bail, or order admitting to
37 bail in cash or surety bond executed by a certified,
38 admitted surety insurer as provided in the Insurance
39 Code, to issue and sign an order for the release of the
40 arrested person, and to set a time and place for the

1 appearance of the arrested person before the appropriate
2 court and give notice thereof.

3 (b) If a defendant has appeared before a judge of the
4 court on the charge contained in the complaint,
5 indictment, or information, the bail shall be in the amount
6 fixed by the judge at the time of the appearance; if that
7 appearance has not been made, the bail shall be in the
8 amount fixed in the warrant of arrest or, if no warrant of
9 arrest has been issued, the amount of bail shall be
10 pursuant to the uniform countywide schedule of bail for
11 the county in which the defendant is required to appear,
12 previously fixed and approved as provided in subdivisions
13 (c) and (d).

14 (c) It is the duty of the superior, municipal and justice
15 court judges in each county to prepare, adopt, and
16 annually revise, by a majority vote, at a meeting called by
17 the presiding judge of the superior court of the county, a
18 uniform countywide schedule of bail for all bailable
19 felony offenses.

20 In adopting a uniform countywide schedule of bail for
21 all bailable offenses the judges shall consider the
22 seriousness of the offense charged. In considering the
23 seriousness of the offense charged the judges shall assign
24 an additional amount of required bail for each
25 aggravating or enhancing factor chargeable in the
26 complaint, including, but not limited to, additional bail
27 for charges alleging facts which would bring a person
28 within any of the following sections: Section 667.5, 667.51,
29 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2,
30 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7,
31 12022.8, or 12022.9 of the Penal Code, or Section 11356.5,
32 11370.2, or 11370.4 of the Health and Safety Code.

33 In considering offenses wherein a violation of Chapter
34 6 (commencing with Section 11350) of Division 10 of the
35 Health and Safety Code is alleged, the judge shall assign
36 an additional amount of required bail for offenses
37 involving large quantities of controlled substances.

38 (d) The municipal and justice court judges in each
39 county shall prepare, adopt, and annually revise, by a
40 majority vote, at a meeting called by the presiding judge

1 of the municipal court or the senior judge of the justice
2 court at each county seat, a uniform, countywide
3 schedule of bail for all misdemeanor and infraction
4 offenses except Vehicle Code infractions. The penalty
5 schedule for infraction violations of the Vehicle Code
6 shall be established by the Judicial Council in accordance
7 with Section 40310 of the Vehicle Code.

8 (e) Each countywide bail schedule shall contain a list
9 of the offenses and the amounts of bail applicable thereto
10 as the judges determine to be appropriate. If the
11 schedules do not list all offenses specifically, they shall
12 contain a general clause for designated amounts of bail as
13 the judges of the county determine to be appropriate for
14 all the offenses not specifically listed in the schedules. A
15 copy of the countywide bail schedule shall be sent to the
16 officer in charge of the county jail, to the officer in charge
17 of each city jail within the county, to each superior,
18 municipal and justice court judge and commissioner in
19 the county, and to the Judicial Council.

20 (f) Upon posting bail the defendant or arrested person
21 shall be discharged from custody as to the offense on
22 which the bail is posted.

23 All money and surety bonds so deposited with an officer
24 authorized to receive bail shall be transmitted
25 immediately to the judge or clerk of the court by which
26 the order was made or warrant issued or bail schedule
27 fixed. If, in the case of felonies, an indictment is filed, the
28 judge or clerk of the court shall transmit all of the money
29 and surety bonds to the county clerk.

30 (g) If a defendant or arrested person so released fails
31 to appear at the time and in the court so ordered upon his
32 or her release from custody, Sections 1305 and 1306 apply.

33 *SEC. 11. Section 2933.5 of the Penal Code is amended*
34 *to read:*

35 2933.5. (a) (1) Notwithstanding any other law,
36 every person who is convicted of any felony offense listed
37 in paragraph (2), and who previously has been convicted
38 two or more times, on charges separately brought and
39 tried, and who previously has served two or more
40 separate prior prison terms, as defined in subdivision (g)

1 of Section 667.5, of any offense or offenses listed in
2 paragraph (2), shall be ineligible to earn credit on his or
3 her term of imprisonment pursuant to this chapter.

4 (2) As used in this subdivision, “felony offense”
5 includes any of the following:

6 (A) Murder, as defined in Sections 187 and 189.

7 (B) Voluntary manslaughter, as defined in subdivision
8 (a) of Section 192.

9 (C) Mayhem as defined in Section 203.

10 (D) Aggravated mayhem, as defined in Section 205.

11 (E) Kidnapping, as defined in Section 207, 209, or
12 209.5.

13 (F) Assault with vitriol, corrosive acid, or caustic
14 chemical of any nature, as described in Section 244.

15 (G) Rape, as defined in paragraph (2) or (6) of
16 subdivision (a) of Section 261 or paragraph (1) or (4) of
17 subdivision (a) of Section 262.

18 (H) Sodomy by means of force, violence, duress,
19 menace or fear of immediate and unlawful bodily injury
20 on the victim or another person, as described in
21 subdivision (c) of Section 286.

22 (I) Sodomy while voluntarily acting in concert, as
23 described in subdivision (d) of Section 286.

24 (J) Lewd or lascivious acts on a child under the age of
25 14 years, as described in subdivision (b) of Section 288.

26 (K) Oral copulation by means of force, violence,
27 duress, menace, or fear of immediate and unlawful bodily
28 injury on the victim or another person, as described in
29 subdivision (c) of Section 288a.

30 (L) Continuous sexual abuse of a child, as described in
31 Section 288.5.

32 (M) Penetration by foreign object, as described in
33 subdivision (a) of Section 289.

34 (N) Exploding a destructive device or explosive with
35 intent to injure, as described in Section 12303.3, with
36 intent to murder, as described in Section 12308, or
37 resulting in great bodily injury or mayhem, as described
38 in Section 12309.

1 (O) Any felony in which the defendant personally
2 inflicted great bodily injury, as provided in Section
3 12022.53 or 12022.7.

4 (b) A prior conviction of an offense listed in
5 subdivision (a) shall include a conviction in another
6 jurisdiction for an offense which includes all of the
7 elements of the particular felony as defined under
8 California law.

9 (c) This section shall apply whenever the present
10 felony is committed on or after the effective date of this
11 section, regardless of the date of commission of the prior
12 offense or offenses resulting in credit-earning
13 ineligibility.

14 (d) This section shall be in addition to, and shall not
15 preclude the imposition of, any applicable sentence
16 enhancement terms, or probation ineligibility and
17 habitual offender provisions authorized under any other
18 section.

19 *SEC. 12. Section 2962 of the Penal Code is amended*
20 *to read:*

21 2962. As a condition of parole, a prisoner who meets
22 the following criteria shall be required to be treated by
23 the State Department of Mental Health, and the State
24 Department of Mental Health shall provide the necessary
25 treatment:

26 (a) The prisoner has a severe mental disorder that is
27 not in remission or cannot be kept in remission without
28 treatment.

29 The term “severe mental disorder” means an illness or
30 disease or condition that substantially impairs the
31 person’s thought, perception of reality, emotional
32 process, or judgment; or which grossly impairs behavior;
33 or that demonstrates evidence of an acute brain
34 syndrome for which prompt remission, in the absence of
35 treatment, is unlikely. The term “severe mental
36 disorder” as used in this section does not include a
37 personality or adjustment disorder, epilepsy, mental
38 retardation or other developmental disabilities, or
39 addiction to or abuse of intoxicating substances.

1 The term “remission” means a finding that the overt
2 signs and symptoms of the severe mental disorder are
3 controlled either by psychotropic medication or
4 psychosocial support. A person “cannot be kept in
5 remission without treatment” if during the year prior to
6 the question being before the Board of Prison Terms or
7 a trial court, he or she has been in remission and he or she
8 has been physically violent, except in self-defense, or he
9 or she has made a serious threat of substantial physical
10 harm upon the person of another so as to cause the target
11 of the threat to reasonably fear for his or her safety or the
12 safety of his or her immediate family, or he or she has
13 intentionally caused property damage, or he or she has
14 not voluntarily followed the treatment plan. In
15 determining if a person has voluntarily followed the
16 treatment plan, the standard shall be whether the person
17 has acted as a reasonable person would in following the
18 treatment plan.

19 (b) The severe mental disorder was one of the causes
20 of or was an aggravating factor in the commission of a
21 crime for which the prisoner was sentenced to prison.

22 (c) The prisoner has been in treatment for the severe
23 mental disorder for 90 days or more within the year prior
24 to the prisoner’s parole or release.

25 (d) (1) Prior to release on parole, the person in
26 charge of treating the prisoner and a practicing
27 psychiatrist or psychologist from the State Department of
28 Mental Health have evaluated the prisoner at a facility of
29 the Department of Corrections, and a chief psychiatrist
30 of the Department of Corrections has certified to the
31 Board of Prison Terms that the prisoner has a severe
32 mental disorder, that the disorder is not in remission, or
33 cannot be kept in remission without treatment, that the
34 severe mental disorder was one of the causes or was an
35 aggravating factor in the prisoner’s criminal behavior,
36 that the prisoner has been in treatment for the severe
37 mental disorder for 90 days or more within the year prior
38 to his or her parole release day, and that by reason of his
39 or her severe mental disorder the prisoner represents a
40 substantial danger of physical harm to others. For

1 prisoners being treated by the State Department of
2 Mental Health pursuant to Section 2684, the certification
3 shall be by a chief psychiatrist of the Department of
4 Corrections, and the evaluation shall be done at a state
5 hospital by the person at the state hospital in charge of
6 treating the prisoner and a practicing psychiatrist or
7 psychologist from the Department of Corrections.

8 (2) If the professionals doing the evaluation pursuant
9 to paragraph (1) do not concur that (i) the prisoner has
10 a severe mental disorder, or (ii) that the disorder is not
11 in remission or cannot be kept in remission without
12 treatment, or (iii) that the severe mental disorder was a
13 cause of, or aggravated, the prisoner's criminal behavior,
14 and a chief psychiatrist has certified the prisoner to the
15 Board of Prison Terms pursuant to this paragraph, then
16 the Board of Prison Terms shall order a further
17 examination by two independent professionals, as
18 provided for in Section 2978.

19 (3) Only if both independent professionals who
20 evaluate the prisoner pursuant to paragraph (2) concur
21 with the chief psychiatrist's certification of the issues
22 described in paragraph (2), shall this subdivision be
23 applicable to the prisoner. The professionals appointed
24 pursuant to Section 2978 shall inform the prisoner that the
25 purpose of their examination is not treatment but to
26 determine if the prisoner meets certain criteria to be
27 involuntarily treated as a mentally disordered offender.
28 It is not required that the prisoner appreciate or
29 understand that information.

30 (e) The crime referred to in subdivision (b) meets
31 both of the following criteria:

32 (1) The defendant received a determinate sentence
33 pursuant to Section 1170 for the crime.

34 (2) The crime is one of the following:

35 (A) Voluntary manslaughter.

36 (B) Mayhem.

37 (C) Kidnapping in violation of Section 207.

38 (D) Any robbery wherein it was charged and proved
39 that the defendant personally used a deadly or dangerous

1 weapon, as provided in subdivision (b) of Section 12022,
2 in the commission of that robbery.

3 (E) Carjacking, as defined in subdivision (a) of Section
4 215, if it is charged and proved that the defendant
5 personally used a deadly or dangerous weapon, as
6 provided in subdivision (b) of Section 12022, in the
7 commission of the carjacking.

8 (F) Rape, as defined in paragraph (2) or (6) of
9 subdivision (a) of Section 261 or paragraph (1) or (4) of
10 subdivision (a) of Section 262.

11 (G) Sodomy by force, violence, duress, menace, or fear
12 of immediate and unlawful bodily injury on the victim or
13 another person.

14 (H) Oral copulation by force, violence, duress,
15 menace, or fear of immediate and unlawful bodily injury
16 on the victim or another person.

17 (I) Lewd acts on a child under the age of 14 years in
18 violation of Section 288.

19 (J) Continuous sexual abuse in violation of Section
20 288.5.

21 (K) The offense described in subdivision (a) of Section
22 289 where the act was accomplished against the victim's
23 will by force, violence, duress, menace, or fear of
24 immediate and unlawful bodily injury on the victim or
25 another person.

26 (L) Arson in violation of subdivision (a) of Section 451.

27 (M) Any felony in which the defendant used a firearm
28 which use was charged and proved as provided in Section
29 12022.5, 12022.53, or 12022.55.

30 (N) A violation of Section 12308.

31 (O) Attempted murder.

32 (P) A crime not enumerated in subparagraph (A) to
33 (O), inclusive, in which the prisoner used force or
34 violence, or caused serious bodily injury as defined in
35 paragraph (5) of subdivision (f) of Section 243.

36 (f) As used in this chapter, "substantial danger of
37 physical harm" does not require proof of a recent overt
38 act.

39 *SEC. 13. Section 3003 of the Penal Code is amended*
40 *to read:*

1 3003. (a) Except as otherwise provided in this
2 section, an inmate who is released on parole shall be
3 returned to the county that was the last legal residence
4 of the inmate prior to his or her incarceration.

5 For purposes of this subdivision, “last legal residence”
6 shall not be construed to mean the county wherein the
7 inmate committed an offense while confined in a state
8 prison or local jail facility or while confined for treatment
9 in a state hospital.

10 (b) Notwithstanding subdivision (a), an inmate may
11 be returned to another county if that would be in the best
12 interests of the public. If the Board of Prison Terms
13 setting the conditions of parole for inmates sentenced
14 pursuant to subdivision (b) of Section 1168, or the
15 Department of Corrections setting the conditions of
16 parole for inmates sentenced pursuant to Section 1170,
17 decides on a return to another county, it shall place its
18 reasons in writing in the parolee’s permanent record and
19 include these reasons in the notice to the sheriff or chief
20 of police pursuant to Section 3058.6. In making its
21 decision, the paroling authority shall consider, among
22 others, the following factors, giving the greatest weight to
23 the protection of the victim and the safety of the
24 community:

25 (1) The need to protect the life or safety of a victim,
26 the parolee, a witness, or any other person.

27 (2) Public concern that would reduce the chance that
28 the inmate’s parole would be successfully completed.

29 (3) The verified existence of a work offer, or an
30 educational or vocational training program.

31 (4) The existence of family in another county with
32 whom the inmate has maintained strong ties and whose
33 support would increase the chance that the inmate’s
34 parole would be successfully completed.

35 (5) The lack of necessary outpatient treatment
36 programs for parolees receiving treatment pursuant to
37 Section 2960.

38 (c) The Department of Corrections, in determining
39 an out-of-county commitment, shall give priority to the
40 safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date the address as provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

1 (L) A digitized image of the photograph and at least
2 a single digit fingerprint of the parolee.

3 (M) A geographic coordinate for the parolee's
4 residence location for use with a Geographical
5 Information System (GIS) or comparable computer
6 program.

7 (2) The information required by this subdivision shall
8 come from the statewide parolee data base. The
9 information obtained from each source shall be based on
10 the same timeframe.

11 (3) All of the information required by this subdivision
12 shall be provided utilizing a computer-to-computer
13 transfer in a format usable by a desktop computer system.
14 The transfer of this information shall be continually
15 available to local law enforcement agencies upon request.

16 (4) The unauthorized release or receipt of the
17 information described in this subdivision is a violation of
18 Section 11143.

19 (f) Notwithstanding any other law, an inmate who is
20 released on parole shall not be returned to a location
21 within 35 miles of the actual residence of a victim of, or
22 a witness to, a violent felony as defined in paragraphs (1)
23 to (7), inclusive, of subdivision (c) of Section 667.5 or a
24 felony in which the defendant inflicts great bodily injury
25 on any person other than an accomplice that has been
26 charged and proved as provided for in Section 12022.53,
27 12022.7, or 12022.9, if the victim or witness has requested
28 additional distance in the placement of the inmate on
29 parole, and if the Board of Prison Terms or the
30 Department of Corrections finds that there is a need to
31 protect the life, safety, or well-being of a victim or
32 witness.

33 (g) The authority shall give consideration to the
34 equitable distribution of parolees and the proportion of
35 out-of-county commitments from a county compared to
36 the number of commitments from that county when
37 making parole decisions.

38 (h) An inmate may be paroled to another state
39 pursuant to any other law.

1 (i) (1) Except as provided in paragraph (2), the
2 Department of Corrections shall be the agency primarily
3 responsible for, and shall have control over, the program,
4 resources, and staff implementing the Law Enforcement
5 Automated Data System (LEADS) in conformance with
6 subdivision (e).

7 (2) Notwithstanding paragraph (1), the Department
8 of Justice shall be the agency primarily responsible for the
9 proper release of information under LEADS that relates
10 to fingerprint cards.

11 *SEC. 14. Section 3057 of the Penal Code is amended*
12 *to read:*

13 3057. (a) Confinement pursuant to a revocation of
14 parole in the absence of a new conviction and
15 commitment to prison under other provisions of law, shall
16 not exceed 12 months, except as provided in subdivision
17 (c).

18 (b) Upon completion of confinement pursuant to
19 parole revocation without a new commitment to prison,
20 the inmate shall be released on parole for a period which
21 shall not extend beyond that portion of the maximum
22 statutory period of parole specified by Section 3000 which
23 was unexpired at the time of each revocation.

24 (c) Notwithstanding the limitations in subdivision (a)
25 and in Section 3060.5 upon confinement pursuant to a
26 parole revocation, the parole authority may extend the
27 confinement pursuant to parole revocation for a
28 maximum of an additional 12 months for subsequent acts
29 of misconduct committed by the parolee while confined
30 pursuant to that parole revocation. Upon a finding of
31 good cause to believe that a parolee has committed a
32 subsequent act of misconduct and utilizing procedures
33 governing parole revocation proceedings, the parole
34 authority may extend the period of confinement
35 pursuant to parole revocation as follows: (1) not more
36 than 180 days for an act punishable as a felony whether or
37 not prosecution is undertaken, (2) not more than 90 days
38 for an act punishable as a misdemeanor, whether or not
39 prosecution is undertaken, and (3) not more than 30 days



1 for an act defined as a serious disciplinary offense
2 pursuant to subdivision (a) of Section 2932.

3 (d) (1) Except for parolees specified in paragraph
4 (2), any revocation period imposed under subdivision (a)
5 may be reduced in the same manner and to the same
6 extent as a term of imprisonment may be reduced by
7 worktime credits under Section 2933. Worktime credit
8 must be earned and may be forfeited pursuant to the
9 provisions of Section 2932.

10 Worktime credit forfeited shall not be restored.

11 (2) The following parolees shall not be eligible for
12 credit under this subdivision:

13 (A) Parolees who are sentenced under Section 1168
14 with a maximum term of life imprisonment.

15 (B) Parolees who violated a condition of parole
16 relating to association with specified persons, entering
17 prohibited areas, attendance at parole outpatient clinic,
18 or psychiatric attention.

19 (C) Parolees who were revoked for conduct described
20 in, or that could be prosecuted under any of the following
21 sections, whether or not prosecution is undertaken:
22 Section 189, Section 191.5, subdivision (a) or paragraph
23 (3) of subdivision (c) of Section 192, Section 203, 207, 211,
24 215, 217.1, or 220, subdivision (b) of Section 241, Section
25 244, paragraph (1) or (2) of subdivision (a) of Section 245,
26 paragraph (2) or (6) of subdivision (a) of Section 261,
27 paragraph (1) or (4) of subdivision (a) of Section 262,
28 Section 264.1, subdivision (c) or (d) of Section 286,
29 Section 288, subdivision (c) or (d) of Section 288a,
30 subdivision (a) of Section 289, 347, or 404, subdivision (a)
31 of Section 451, Section 12020, 12021, 12022, 12022.5,
32 12022.53, 12022.7, 12022.8, 12025, or 12560, or Section 664
33 for any attempt to engage in conduct described in or that
34 could be prosecuted under any of the above-mentioned
35 sections.

36 (D) Parolees who were revoked for any reason if they
37 had been granted parole after conviction of any of the
38 offenses specified in subparagraph (C).

39 (E) Parolees who the parole authority finds at a
40 revocation hearing to be unsuitable for reduction of the

1 period of confinement because of the circumstances and
2 gravity of the parole violation, or because of prior
3 criminal history.

4 *SEC. 15.* Section 676 of the Welfare and Institutions
5 Code is amended to read:

6 676. (a) Unless requested by the minor concerning
7 whom the petition has been filed and any parent or
8 guardian present, the public shall not be admitted to a
9 juvenile court hearing. Nothing in this section shall
10 preclude the attendance of up to two family members of
11 a prosecuting witness for the support of that witness, as
12 authorized by Section 868.5 of the Penal Code. The judge
13 or referee may nevertheless admit those persons he or she
14 deems to have a direct and legitimate interest in the
15 particular case or the work of the court. However, except
16 as provided in subdivision (b), members of the public
17 shall be admitted, on the same basis as they may be
18 admitted to trials in a court of criminal jurisdiction, to
19 hearings concerning petitions filed pursuant to Section
20 602 alleging that a minor is a person described in Section
21 602 by reason of the violation of any one of the following
22 offenses:

23 (1) Murder.

24 (2) Arson of an inhabited building.

25 (3) Robbery while armed with a dangerous or deadly
26 weapon.

27 (4) Rape with force or violence or threat of great
28 bodily harm.

29 (5) Sodomy by force, violence, duress, menace, or
30 threat of great bodily harm.

31 (6) Oral copulation by force, violence, duress, menace,
32 or threat of great bodily harm.

33 (7) Any offense specified in subdivision (a) of Section
34 289 of the Penal Code.

35 (8) Kidnapping for ransom.

36 (9) Kidnapping in violation of subdivision (b) of
37 Section 209 of the Penal Code.

38 (10) Kidnapping with bodily harm.

39 (11) Assault with intent to murder or attempted
40 murder.

1 (12) Assault with a firearm or destructive device.

2 (13) Assault by any means of force likely to produce
3 great bodily injury.

4 (14) Discharge of a firearm into an inhabited or
5 occupied building.

6 (15) Any offense described in Section 1203.09 of the
7 Penal Code.

8 (16) Any offense described in Section 12022.5 of the
9 Penal Code.

10 (17) Any felony offense in which a minor personally
11 used a weapon listed in subdivision (a) of Section 12020
12 of the Penal Code.

13 (18) Burglary of an inhabited dwelling house or trailer
14 coach, as defined in Section 635 of the Vehicle Code, or
15 the inhabited portion of any other building, if the minor
16 previously has been adjudged a ward of the court by
17 reason of the commission of any offense listed in this
18 section, including an offense listed in this paragraph.

19 (19) Any felony offense described in Section 136.1 or
20 137 of the Penal Code.

21 (20) Any offense as specified in Sections 11351, 11351.5,
22 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and
23 Safety Code.

24 (21) Criminal street gang activity which constitutes a
25 felony pursuant to Section 186.22 of the Penal Code.

26 (22) Manslaughter as specified in Section 192 of the
27 Penal Code.

28 (23) Driveby shooting or discharge of a weapon from
29 or at a motor vehicle as specified in Sections 246, 247, and
30 12034 of the Penal Code.

31 (24) Any crime committed with an assault weapon, as
32 defined in Section 12276 of the Penal Code, including
33 possession of an assault weapon as specified in subdivision
34 (b) of Section 12280 of the Penal Code.

35 (25) Carjacking, while armed with a dangerous or
36 deadly weapon.

37 (26) Kidnapping, in violation of Section 209.5 of the
38 Penal Code.

39 (27) Torture, as described in Sections 206 and 206.1 of
40 the Penal Code.

1 (28) Aggravated mayhem, in violation of Section 205
2 of the Penal Code.

3 (b) Where the petition filed alleges that the minor is
4 a person described in Section 602 by reason of the
5 commission of rape with force or violence or great bodily
6 harm; sodomy by force, violence, duress, menace, or
7 threat of great bodily harm; oral copulation by force,
8 violence, duress, menace, or threat of great bodily harm;
9 or any offense specified in Section 289 of the Penal Code,
10 members of the public shall not be admitted to the
11 hearing in either of the following instances:

12 (1) Upon a motion for a closed hearing by the district
13 attorney, who shall make the motion if so requested by
14 the victim.

15 (2) During the victim's testimony, if, at the time of the
16 offense the victim was under 16 years of age.

17 (c) The name of a minor found to have committed one
18 of the offenses listed in subdivision (a) shall not be
19 confidential, unless the court, for good cause, so orders.

20 (d) Notwithstanding Sections 827 and 828 and subject
21 to subdivisions (e) and (f), when a petition is sustained
22 for any offense listed in subdivision (a), the charging
23 petition, the minutes of the proceeding, and the orders of
24 adjudication and disposition of the court that are
25 contained in the court file shall be available for public
26 inspection. Nothing in this subdivision shall be construed
27 to authorize public access to any other documents in the
28 court file.

29 (e) The probation officer or any party may petition the
30 juvenile court to prohibit disclosure to the public of any
31 file or record. The juvenile court shall prohibit the
32 disclosure if it appears that the harm to the minor,
33 victims, witnesses, or public from the public disclosure
34 outweighs the benefit of public knowledge.

35 (f) Nothing in this section shall be applied to limit the
36 disclosure of information as otherwise provided for by
37 law.

38 ~~SEC. 4.~~

39 *SEC. 16.* Section 707 of the Welfare and Institutions
40 Code is amended to read:

1 707. (a) In any case in which a minor is alleged to be
2 a person described in Section 602 by reason of the
3 violation, when he or she was 16 years of age or older, of
4 any criminal statute or ordinance except those listed in
5 subdivision (b), upon motion of the petitioner made prior
6 to the attachment of jeopardy the court shall cause the
7 probation officer to investigate and submit a report on the
8 behavioral patterns and social history of the minor being
9 considered for a determination of unfitness. Following
10 submission and consideration of the report, and of any
11 other relevant evidence which the petitioner or the
12 minor may wish to submit, the juvenile court may find
13 that the minor is not a fit and proper subject to be dealt
14 with under the juvenile court law if it concludes that the
15 minor would not be amenable to the care, treatment, and
16 training program available through the facilities of the
17 juvenile court, based upon an evaluation of the following
18 criteria:

19 (1) The degree of criminal sophistication exhibited by
20 the minor.

21 (2) Whether the minor can be rehabilitated prior to
22 the expiration of the juvenile court's jurisdiction.

23 (3) The minor's previous delinquent history.

24 (4) Success of previous attempts by the juvenile court
25 to rehabilitate the minor.

26 (5) The circumstances and gravity of the offense
27 alleged in the petition to have been committed by the
28 minor.

29 A determination that the minor is not a fit and proper
30 subject to be dealt with under the juvenile court law may
31 be based on any one or a combination of the factors set
32 forth above, which shall be recited in the order of
33 unfitness. In any case in which a hearing has been noticed
34 pursuant to this section, the court shall postpone the
35 taking of a plea to the petition until the conclusion of the
36 fitness hearing, and no plea which may already have been
37 entered shall constitute evidence at the hearing.

38 (b) Subdivision (c) shall be applicable in any case in
39 which a minor is alleged to be a person described in

1 Section 602 by reason of the violation, when he or she was
2 16 years of age or older, of one of the following offenses:
3 (1) Murder.
4 (2) Arson, as provided in subdivision (a) or (b) of
5 Section 451 of the Penal Code.
6 (3) Robbery while armed with a dangerous or deadly
7 weapon.
8 (4) Rape with force or violence or threat of great
9 bodily harm.
10 (5) Sodomy by force, violence, duress, menace, or
11 threat of great bodily harm.
12 (6) Lewd or lascivious act as provided in subdivision
13 (b) of Section 288 of the Penal Code.
14 (7) Oral copulation by force, violence, duress, menace,
15 or threat of great bodily harm.
16 (8) Any offense specified in subdivision (a) of Section
17 289 of the Penal Code.
18 (9) Kidnapping for ransom.
19 (10) Kidnapping in violation of subdivision (b) of
20 Section 209 of the Penal Code.
21 (11) Kidnapping with bodily harm.
22 (12) Attempted murder.
23 (13) Assault with a firearm or destructive device.
24 (14) Assault by any means of force likely to produce
25 great bodily injury.
26 (15) Discharge of a firearm into an inhabited or
27 occupied building.
28 (16) Any offense described in Section 1203.09 of the
29 Penal Code.
30 (17) Any offense described in Section 12022.5 of the
31 Penal Code.
32 (18) Any felony offense in which the minor personally
33 used a weapon listed in subdivision (a) of Section 12020
34 of the Penal Code.
35 (19) Any felony offense described in Section 136.1 or
36 137 of the Penal Code.
37 (20) Manufacturing, compounding, or selling one-half
38 ounce or more of any salt or solution of a controlled
39 substance specified in subdivision (e) of Section 11055 of
40 the Health and Safety Code.



(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(27) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(28) The offense described in Section 12308 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the

1 juvenile court based upon an evaluation of each of the
2 following criteria:

3 (1) The degree of criminal sophistication exhibited by
4 the minor.

5 (2) Whether the minor can be rehabilitated prior to
6 the expiration of the juvenile court's jurisdiction.

7 (3) The minor's previous delinquent history.

8 (4) Success of previous attempts by the juvenile court
9 to rehabilitate the minor.

10 (5) The circumstances and gravity of the offenses
11 alleged in the petition to have been committed by the
12 minor.

13 A determination that the minor is a fit and proper
14 subject to be dealt with under the juvenile court law shall
15 be based on a finding of amenability after consideration
16 of the criteria set forth above, and findings therefor
17 recited in the order as to each of the above criteria that
18 the minor is fit and proper under each and every one of
19 the above criteria. In making a finding of fitness, the court
20 may consider extenuating or mitigating circumstances in
21 evaluating each of the above criteria. In any case in which
22 a hearing has been noticed pursuant to this section, the
23 court shall postpone the taking of a plea to the petition
24 until the conclusion of the fitness hearing and no plea
25 which may already have been entered shall constitute
26 evidence at the hearing.

27 (d) (1) In any case in which a minor is alleged to be
28 a person described in Section 602 by reason of the
29 violation, when he or she had attained the age of 14 years
30 but had not attained the age of 16 years, of any of the
31 offenses set forth in paragraph (2), upon motion of the
32 petitioner made prior to the attachment of jeopardy the
33 court shall cause the probation officer to investigate and
34 submit a report on the behavioral patterns and social
35 history of the minor being considered for a determination
36 of unfitness. Following submission and consideration of
37 the report, and of any other relevant evidence that the
38 petitioner or the minor may wish to submit, the juvenile
39 court may find that the minor is not a fit and proper
40 subject to be dealt with under the juvenile court law if it



1 concludes that the minor would not be amenable to the
2 care, treatment, and training program available through
3 the facilities of the juvenile court, based upon an
4 evaluation of the following criteria:

5 (A) The degree of criminal sophistication exhibited by
6 the minor.

7 (B) Whether the minor can be rehabilitated prior to
8 the expiration of the juvenile court's jurisdiction.

9 (C) The minor's previous delinquent history.

10 (D) Success of previous attempts by the juvenile court
11 to rehabilitate the minor.

12 (E) The circumstances and gravity of the offense
13 alleged in the petition to have been committed by the
14 minor.

15 A determination that the minor is not a fit and proper
16 subject to be dealt with under the juvenile court law may
17 be based on any one or a combination of the factors set
18 forth above, which shall be recited in the order of
19 unfitness. In any case in which a hearing has been noticed
20 pursuant to this subdivision, the court shall postpone the
21 taking of a plea to the petition until the conclusion of the
22 fitness hearing, and no plea that may already have been
23 entered shall constitute evidence at the hearing.

24 (2) Paragraph (1) shall be applicable in any case in
25 which a minor is alleged to be a person described in
26 Section 602 by reason of the violation, when he or she had
27 attained the age of 14 years but had not attained the age
28 of 16 years, of one of the following offenses:

29 (A) Murder.

30 (B) Robbery in which the minor personally used a
31 firearm.

32 (C) Rape with force or violence or threat of great
33 bodily harm.

34 (D) Sodomy by force, violence, duress, menace, or
35 threat of great bodily harm.

36 (E) Oral copulation by force, violence, duress,
37 menace, or threat of great bodily harm.

38 (F) The offense specified in subdivision (a) of Section
39 289 of the Penal Code.

40 (G) Kidnapping for ransom.

- 1 (H) Kidnapping in violation of subdivision (b) of
2 Section 209 of the Penal Code.
- 3 (I) Kidnapping with bodily harm.
- 4 (J) Kidnapping, in violation of Section 209.5 of the
5 Penal Code.
- 6 (K) The offense described in subdivision (c) of Section
7 12034 of the Penal Code, in which the minor personally
8 used a firearm.
- 9 (L) Personally discharging a firearm into an inhabited
10 or occupied building.
- 11 (M) Manufacturing, compounding, or selling one-half
12 ounce or more of any salt or solution of a controlled
13 substance specified in subdivision (e) of Section 11055 of
14 the Health and Safety Code.
- 15 (N) Escape, by the use of force or violence, from any
16 county juvenile hall, home, ranch, camp, or forestry camp
17 in violation of subdivision (b) of Section 871 where great
18 bodily injury is intentionally inflicted upon an employee
19 of the juvenile facility during the commission of the
20 escape.
- 21 (O) Torture, as described in Section 206 of the Penal
22 Code.
- 23 (P) Aggravated mayhem, as described in Section 205
24 of the Penal Code.
- 25 (Q) Assault with a firearm in which the minor
26 personally used the firearm.
- 27 (R) Attempted murder.
- 28 (S) Rape in which the minor personally used a firearm.
- 29 (T) Burglary in which the minor personally used a
30 firearm.
- 31 (U) Kidnapping in which the minor personally used a
32 firearm.
- 33 (V) The offense described in Section 12308 of the
34 Penal Code.
- 35 (W) Carjacking, in which the minor personally used a
36 firearm.
- 37 (e) This subdivision shall apply to a minor alleged to be
38 a person described in Section 602 by reason of the
39 violation, when he or she had attained the age of 14 years
40 but had not attained the age of 16 years, of the offense of

1 murder in which it is alleged in the petition that one of
2 the following exists:

3 (1) In the case of murder in the first or second degree,
4 the minor personally killed the victim.

5 (2) In the case of murder in the first or second degree,
6 the minor, acting with the intent to kill the victim, aided,
7 abetted, counseled, commanded, induced, solicited,
8 requested, or assisted any person to kill the victim.

9 (3) In the case of murder in the first degree, while not
10 the actual killer, the minor, acting with reckless
11 indifference to human life and as a major participant in
12 a felony enumerated in paragraph (17) of subdivision (a)
13 of Section 190.2, or an attempt to commit that felony,
14 aided, abetted, counseled, commanded, induced,
15 solicited, requested, or assisted in the commission or
16 attempted commission of that felony and the commission
17 or attempted commission of that felony or the immediate
18 flight therefrom resulted in the death of the victim.

19 Upon motion of the petitioner made prior to the
20 attachment of jeopardy, the court shall cause the
21 probation officer to investigate and submit a report on the
22 behavioral patterns and social history of the minor being
23 considered for a determination of unfitness. Following
24 submission and consideration of the report, and of any
25 other relevant evidence which the petitioner or the
26 minor may wish to submit, the minor shall be presumed
27 to be not a fit and proper subject to be dealt with under
28 the juvenile court law unless the juvenile court concludes,
29 based upon evidence, which evidence may be of
30 extenuating or mitigating circumstances, that the minor
31 would be amenable to the care, treatment, and training
32 program available through the facilities of the juvenile
33 court based upon an evaluation of each of the following
34 criteria:

35 (A) The degree of criminal sophistication exhibited by
36 the minor.

37 (B) Whether the minor can be rehabilitated prior to
38 the expiration of the juvenile court's jurisdiction.

39 (C) The minor's previous delinquent history.

1 (D) Success of previous attempts by the juvenile court
2 to rehabilitate the minor.

3 (E) The circumstances and gravity of the offenses
4 alleged in the petition to have been committed by the
5 minor.

6 A determination that the minor is a fit and proper
7 subject to be dealt with under the juvenile court law shall
8 be based on a finding of amenability after consideration
9 of the criteria set forth above, and findings therefor
10 recited in the order as to each of the above criteria that
11 the minor is fit and proper under each and every one of
12 the above criteria. In making a finding of fitness, the court
13 may consider extenuating or mitigating circumstances in
14 evaluating each of the above criteria. In any case in which
15 a hearing has been noticed pursuant to this section, the
16 court shall postpone the taking of a plea to the petition
17 until the conclusion of the fitness hearing and no plea
18 which may already have been entered shall constitute
19 evidence at the hearing.

20 (f) Any report submitted by a probation officer
21 pursuant to this section regarding the behavioral patterns
22 and social history of the minor being considered for a
23 determination of unfitness shall include any written or
24 oral statement offered by the victim, the victim's parent
25 or guardian if the victim is a minor, or if the victim has
26 died, the victim's next of kin, as authorized by subdivision
27 (b) of Section 656.2. Victims' statements shall be
28 considered by the court to the extent they are relevant to
29 the court's determination of unfitness.

30 ~~SEC. 5.~~

31 *SEC. 17.* Section 828.1 of the Welfare and Institutions
32 Code is amended to read:

33 828.1. (a) While the Legislature reaffirms its belief
34 that juvenile criminal records, in general, should be
35 confidential, it is the intent of the Legislature in enacting
36 this section to provide for a limited exception to that
37 confidentiality in cases involving serious acts of violence.
38 Further, it is the intent of the Legislature that even in
39 these selected cases the dissemination of juvenile
40 criminal records be as limited as possible, consistent with

1 the need to work with a student in an appropriate fashion,
2 and the need to protect potentially vulnerable school staff
3 and other students over whom the school staff exercises
4 direct supervision and responsibility.

5 (b) Notwithstanding subdivision (a) of Section 828, a
6 school district police or security department may provide
7 written notice to the superintendent of the school district
8 that a minor enrolled in a public school maintained by
9 that school district, in kindergarten or any of grades 1 to
10 12, inclusive, has been found by a court of competent
11 jurisdiction to have illegally used, sold, or possessed a
12 controlled substance as defined in Section 11007 of the
13 Health and Safety Code or to have committed any crime
14 listed in paragraphs (1) to (15), inclusive, or paragraphs
15 (17) to (19), inclusive, or paragraphs (25) to (28),
16 inclusive, of subdivision (b) of, or in paragraph (2) of
17 subdivision (d) of, or subdivision (e) of, Section 707. The
18 information may be expeditiously transmitted to any
19 teacher, counselor, or administrator with direct
20 supervisory or disciplinary responsibility over the
21 minor, who the superintendent or his or her designee,
22 after consultation with the principal at the school of
23 attendance, believes needs this information to work with
24 the student in an appropriate fashion, to avoid being
25 needlessly vulnerable or to protect other persons from
26 needless vulnerability.

27 (c) Any information received by a teacher, counselor,
28 or administrator pursuant to this section shall be received
29 in confidence for the limited purpose for which it was
30 provided and shall not be further disseminated by the
31 teacher, counselor, or administrator. An intentional
32 violation of the confidentiality provisions of this section is
33 a misdemeanor, punishable by a fine not to exceed five
34 hundred dollars (\$500).

35 ~~SEC. 6.~~

36 *SEC. 18. Section 3052 of the Welfare and Institutions*
37 *Code is amended to read:*

38 3052. (a) Sections 3050 and 3051 shall not apply to any
39 of the following:

1 (1) Persons convicted of any offense for which the
2 provisions of Section 667.6 of the Penal Code apply, or any
3 offense described in Chapter 1 (commencing with
4 Section 450) of Title 13 of Part 1 of such code; or any
5 person convicted of committing or attempting to commit
6 any violent felony as defined in subdivision (c) of Section
7 667.5 of the Penal Code.

8 (2) Persons whose sentence is enhanced pursuant to
9 subdivision (b) of Section 12022 of the Penal Code, or
10 Section 12022.3, 12022.5, 12022.53, 12022.6, 12022.7, or
11 12022.8 of such code; or persons whose sentence is subject
12 to the provisions of Section 3046 of the Penal Code; or
13 persons whose conviction results in a sentence which, in
14 the aggregate, exclusive of any credit that may be earned
15 pursuant to Article 2.5 (commencing with Section 2930)
16 of Chapter 7 of Title 1 of Part 3 of the Penal Code, exceeds
17 six years' imprisonment in state prison; or persons found
18 to come under the provisions of Section 1203.06 of the
19 Penal Code.

20 (b) Notwithstanding the provisions of subdivision (a)
21 of this section or Section 3053, the fact a person comes
22 within Section 1203.07 of the Penal Code does not mean
23 that he or she may not be committed and treated.

24 *SEC. 19.* It is the intent of the Legislature in enacting
25 this act to do both of the following:

26 (a) Make all necessary cross-referencing changes to
27 fully implement Assembly Bill 59 (Chapter 817 of the
28 Statutes of 1997).

29 (b) *Make all necessary cross-referencing changes to*
30 *fully implement Assembly Bill 4 of the 1997–98 Regular*
31 *Session of the Legislature (Chapter 503 of the Statutes of*
32 *1997).*

33 (c) Declare and clarify that subdivision (b) of Section
34 208 of the Penal Code provides an enhanced penalty for
35 a violation of Section 207 of the Penal Code and is not a
36 distinct substantive crime.

37 ~~SEC. 7.~~

38 *SEC. 20.* It is not the intent of the Legislature in
39 enacting this act to change the law as interpreted by the
40 Court of Appeal or the Supreme Court regarding the

1 asportation standard necessary to establish a violation of
2 Section 207 of the Penal Code.

3 ~~SEC. 8.~~

4 *SEC. 21.* No reimbursement is required by this act
5 pursuant to Section 6 of Article XIII B of the California
6 Constitution because the only costs that may be incurred
7 by a local agency or school district will be incurred
8 because this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition
12 of a crime within the meaning of Section 6 of Article
13 XIII B of the California Constitution.

14 Notwithstanding Section 17580 of the Government
15 Code, unless otherwise specified, the provisions of this act
16 shall become operative on the same date that the act
17 takes effect pursuant to the California Constitution.

